In the case of Plan de Sánchez Massacre,

the Inter-American Court of Human Rights, pursuant to Articles 29, 53, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), issues the following Judgment.

I. INTRODUCTION OF THE CASE

1. On July 31, 2002 the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application before the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") against the State of Guatemala (hereinafter "the State" or "Guatemala"), originating in petition No. 11,763, received by the Secretariat of the Commission on October 25, 1996.

2. The Commission filed the application based on Article 51 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), with the aim that the Court "find the State of Guatemala internationally responsible for violations of the rights to humane treatment, to judicial protection, to fair trial, to equal treatment, to freedom of conscience and of religion, and to private property, in combination with the obligation to respect rights, all of them enshrined in Articles 5, 8, 25, 24, 12, 21 and 1[(]1) of the American Convention." In its application, the Commission alleged "denial of justice and other acts of intimidation and discrimination [… to the detriment] of the survivors and the next of kin of the victims of the massacre of 268 persons [...], most of them members of the indigenous Mayan people at the village of Plan de Sánchez, Municipality of Rabinal, Department of Baja Verapaz, carried out by members of the Guatemalan Army and civil collaborators, under protection of the army, on Sunday, July 18, 1982." The Commission pointed out in its application that there is a situation of impunity regarding the massacre, and that the State allegedly has not conducted a

serious and effective investigation to establish the facts, try and punish the direct perpetrators and masterminds of the facts alleged, and it has not redressed the consequences. According to the Commission, the massacre was carried out "within the framework of a genocidal policy of the Guatemalan State carried out with the intention of totally or partially destroying the Mayan indigenous people."

3. The Commission also asked the Court to order the State to adopt certain pecuniary and non-pecuniary reparations. Finally, the Commission asked the Inter-American Court to order the State to pay legal costs and expenses incurred in processing the case under domestic jurisdiction and internationally before the bodies of the inter-American system for the protection of human rights.

II. COMPETENCE

4. Guatemala has been a State Party to the American Convention since May 25, 1978, and it accepted the adjudicatory jurisdiction of the Court on March 9, 1987. Therefore, the Court is competent to hear the instant case, pursuant to Article 62 of the Convention.

III. PROCEEDING BEFORE THE COMMISSION

5. On October 25, 1996 the Centro para la Acción Legal en Derechos Humanos filed a petition before the Inter-American Commission. On July 1, 1997 the Commission opened case No. 11.763 and forwarded the pertinent parts of the petition to the State.

6. On March 11, 1999 the Inter-American Commission, during its 102d Regular Session, adopted Report No. 31/99 on admissibility of the case.

7. On March 19, 1999 the Commission sent Report No. 31/99 to the parties and invited them to state whether they would be willing to begin the friendly settlement process.

8. On August 9, 2000 the President of Guatemala, at the time Mr. Alfonso Portillo, in the framework of the friendly settlement of several cases being processed before the Commission, acknowledged the "institutional responsibility" of the State in the Case of Plan de Sánchez Massacre.

9. On February 28, 2002, during its 114th Regular Session, the Commission, after analyzing the positions of the parties and finding that the friendly settlement stage had ended, adopted - pursuant to the provisions of Article 50 of the Convention, Report on the merits No. 25/02, the operative part of which recommended that the State:

1. Conduct a special, rigorous, impartial, and effective investigation with the aim of trying and punishing the direct perpetrators and masterminds of the Plan de Sánchez massacre.
2. Make reparations both individually and at the community level for the consequences of the violation of the rights listed. Measures of reparation must include identification of all the victims of the Plan de Sánchez massacre, as well as adequate compensation for their next of kin and for survivors of the massacre.

3. To adopt such measures as may be necessary to avoid similar facts occurring in the future, in accordance with the duty of prevention and to ensure the fundamental rights set forth in the American Convention.

10. On May 1, 2002 the Commission sent said report to the State and granted two months, counted from the day it was sent, to comply with the recommendations set forth in it. That same day the Commission, pursuant to Article 43(3) of its Rules of Procedure, informed the petitioners that it had issued Report No. 25/02 and had sent it to the State, and granted them one month's time to submit their position with respect to filing of the case before the Court. On May 30, 2002 the petitioners expressed their interest in submitting the case to the Court.

11. On July 1, 2002 the State expressed that it had acted in accordance with the recommendations of the Commission, contained in its Report on the merits.

12. The Inter-American Commission decided to file the instant case before the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

13. On July 31, 2002 the Inter-American Commission filed the application before the Court.

14. Pursuant to Article 22 of the Rules of Procedure, the Commission appointed as its delegates Susana Villarán and Santiago Canton, and as its counsel María Claudia Pulido, Isabel Madariaga and Ariel Dulitzky. Pursuant to Article 33 of the Rules of Procedure, the Commission also stated that the victims and their next of kin would be represented by the Plan de Sánchez (hereinafter "CALDH", "the representatives of the victims and their next of kin" or "the representatives").

15. On August 22, 2002 the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application by the President of the Court (hereinafter "the President"), forwarded the application and its annexes to the State, and informed it of the terms to send its reply and to appoint its agents in the proceeding. That same day the Secretariat, under instruction by the President, informed the State of its right to appoint an ad hoc judge to participate in consideration of the case. On August 22, 2002 the Secretariat also forwarded the application to the representatives of the victims and their next of kin, and informed them that they had 30 days time to submit their brief with pleadings, motions, and evidence.

16. On September 27 and October 1, 2002 the representatives of the victims and their next of kin sent the brief with pleadings, motions, and evidence and its annexes, respectively. On October 3, 2002 the Secretariat forwarded the brief to the State and to the Commission, and informed them that they had 30 days time to submit whatever observations they deemed pertinent.

17. On November 1, 2002 the Commission submitted its observations on the brief containing pleadings, motions, and evidence submitted by the representatives.

18. On November 1, 2002 the State filed three preliminary objections [FN1] and its reply to the application. In said brief it asked the Court, based on the preliminary objections filed, to find the application submitted by the Commission inadmissible.

[FN1] The preliminary objections filed by the State were the following: "Non-exhaustion of Domestic Remedies, Lack of a Determination on the Arguments of the State regarding alteration of and modifications to the Content of the Report by the Inter-American Commission on Human Rights that gave rise to filing of the Application before the Inter-American Court of Human Rights, and Erroneous and Extensive Interpretation of the Acknowledgment Made by the State of Guatemala."

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19. On November 5, 2002, the Secretariat, under instructions by the President, granted the Commission and the representatives of the victims and their next of kin 30 days time to submit their written pleadings on the preliminary objections filed by the State.

20. On November 11, 2002 the representatives of the victims and their next of kin submitted their written pleadings on the preliminary objections filed by the State, and asked the Court to find them inadmissible.

21. On November 27, 2002 the Commission submitted its written pleadings on preliminary objections, in which it requested that said objections be rejected.

22. On January 22, 2004 Arturo Martínez Gálvez, who had been appointed by the State as ad hoc judge, irrevocably resigned that position. On January 23, 2004 the Secretariat, under instructions by the President, granted the State 30 days time to appoint a new ad hoc judge.

23. On February 3, 2004 CALDH appointed Lucy Turner and Juan Pablo Pons as representatives of the victims and their next of kin, substituting Carlos Loarca and Frank La Rue. [FN2]

[FN2] During the processing of the instant case, CALDH made some changes in the appointment of its representatives before the Court.

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24. On February 19, 2004 the President issued an Order in which he instructed the Commission, pursuant to Article 47(3) of the Rules of Procedure, to submit the testimony of Benjamín Manuel Jerónimo and Eulalio Grave Ramírez through statements before a notary public, and likewise the expert opinions of Luis Rodolfo Ramírez García and José Fernando Moscoso Möller, no later than March 11, 2004, and that they should be forwarded to the representatives to the State for them to submit such observations as they deem pertinent. Said Order also summoned the Inter-American Commission, the representatives of the victims and their next of kin and the State to a public hearing at the seat of the Court, beginning on April 23, 2004, to hear their final oral pleadings on preliminary objections and possible merits, reparations,

and legal costs, as well as the statements of the witnesses and the expert opinions of the expert witnesses proposed by the Commission.

25. On March 1, 2004 the State appointed Alejandro Sánchez Garrido as Judge ad hoc to hear the instant case.

26. On March 11, 2004 the Commission submitted the testimony of Benjamín Manuel Jerónimo and Eulalio Grave Ramírez and the expert opinions of Luis Rodolfo Ramírez García and José Fernando Moscoso Möller, all of them rendered before a notary public. On March 12 and 15, 2004 the Secretariat forwarded to the representatives to the State, respectively, the aforementioned affidavits sent by the Commission, for them to submit such observations as they might deem pertinent. No observations were submitted.

27. On April 6, 2004 the State reported that it had appointed Herbert Estuardo Meneses Coronado as its agent, substituting Rosa del Carmen Bejarano Girón, and Luis Ernesto Cáceres Rodríguez as its Deputy Agent. [FN3]

[FN3] During the processing of the instant case, the State made some changes in the appointment of its representatives before the Court.

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28. On April 21, 2004 the Instituto Comparado de Ciencias Penales en Guatemala (ICCPG), the Centro de Estudios sobre Justicia y Participación (CEJIP) and the Instituto de Estudios comparados en Ciencias Penales y Sociales (INECIP) submitted an amici curiae brief.

29. On April 23, 2004 the Court held two public hearings, at which there appeared:

for the Inter-American Commission on Human Rights:

Susana Villarán, Delegate;
María Claudia Pulido, advisor; and
Isabel Madariaga, advisor;

for the representatives of the victims and their next of kin:

Fernando Arturo López Antillón, representative;
Lucy Turner, representative; and
Juan Pablo Pons, representative;

for the State of Guatemala:

Herbert Estuardo Meneses Coronado, Agent;
Luis Ernesto Cáceres Rodríguez, Deputy Agent; and
Mayra Alarcón Alba, Executive Director of COPREDEH;

witnesses proposed by the Inter-American Commission on Human Rights:

Juan Manuel Jerónimo;
Narcisa Corazón Jerónimo; and
Buenaventura Manuel Jerónimo;

expert witnesses proposed by the Inter-American Commission on Human Rights:

Augusto Willemsen-Díaz; and
Nieves Gómez Dupuis.

30. During the first public hearing, the State expressed verbally and in writing that it withdrew the preliminary objections filed and acknowledged its international responsibility in the instant case (infra paras. 35 to 38).

31. On that same day, April 23, 2004, the Inter-American Commission and the representatives of the victims and their next of kin, respectively, stated at the public hearing, and also in writing, that they accepted the acknowledgment of responsibility made by the State.

32. On April 23, 2004 Guatemala filed a second brief in which it referred to the position of the Commission and of the representatives regarding the acknowledgment of international responsibility made by the State.

33. On April 23, 2004, once the first public hearing had ended and the aforementioned briefs had been submitted, the Court issued an Order in which it decided that all the preliminary objections filed by the State had been withdrawn; it accepted the acknowledgment of international responsibility made by the State, and it decided to continue the public hearing summoned by the February 19, 2004 Order of the President, and it limited its object to reparations and legal costs. At said public hearing, it heard the statements of the witnesses and expert witnesses summoned by the Court and the pleadings of the Inter-American Commission, of the representatives of the victims and their next of kin, and of the State.

V. ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

Pleadings of the State

34. In its reply to the application, the State pointed out that during processing of the instant case before the Commission, on August 9, 2000, the President of the Republic of Guatemala, who at that time was Alfonso Portillo Cabrera, "acknowledge[d] the institutional sic responsibility of the State due to non-compliance [with the] provisions of Article 1(1) of the American Convention to respect and guarantee the rights set forth in the Convention and Articles 1, 2 and 3 of the Political Constitution of Guatemala," and also stated that "[...] with this background, the Guatemalan government accept[ed] that the facts that gave rise to filing of the petitions before the Inter-American Commission on Human Rights occurred […]."

35. On April 23, 2004 the State, both in its statements during the first public hearing held that same day and in the brief that it submitted on the matter, acknowledged its international responsibility in the instant case.

36. In the course of the public hearing, the State, "based on the facts set forth in the brief containing the application by the [...] Inter-American Commission on Human Rights and [in the brief with pleadings, motions, and evidence] of [the representatives]:"

1. Reiterate[d] the acknowledgment of responsibility of the State of Guatemala in the instant case, made by the previous President of the Republic, Alfonso Portillo Cabrera, on August 9, 2000.
2. Withdr[ew] the preliminary objections raised by the State during the proceeding in this case.
3. Acknowledge[d] its international responsibility for violation of Articles 1(1), 5(1), 5(2), 8(1), 11, 16(1), 21(1), 21(2), 24 and 25 of the American Convention [on] Human Rights; without establishing the private or individual responsibility of the alleged perpetrators.
4. Acknowledge[d] its international responsibility for violation of Article 12(2), 12(3), 13(2) paragraph (a) and 13(5) for not ensuring the right of the next of kin of the [...] victims and members of the community to express their religious, spiritual, and cultural beliefs.
5. […] d[id] not address the issue of genocide raised in the application by the […] Commission and the petitioners, because it is not the subject matter of the American Convention [on] Human Rights.
6. Based on Article 54 of the Rules of Procedure of the Court, […] it expresse[d] its willingness to redress the consequences of these violations, for which it request[ed] that the [...]Inter-American Court begin a friendly settlement process regarding reparations, with the Inter-American Commission and the representatives of the […] victims, so that within one year's time they can discuss and agree upon the appropriate measures of reparation.
7. In case […] the State's request to reach a friendly settlement were not accepted, […] it ask[ed] the […] Court, within the framework of the adjudicatory proceeding, to conclude the hearing on the merits, and that the testimony and expert opinions ordered should now provide information to the […] Court regarding appropriate reparations.
8. If the State is forced to financially compensate the [...] victims and their next of kin, [...] it ask[ed] the […] Court, in light of the country's fiscal deficit, to begin the process of compensation by the State in 2005, once the lists of the [...] victims and their next of kin have been checked for accuracy, in accordance with the domestic legal provisions of the State.

37. During the first public hearing, Guatemala also stated that:

pursuant to the Rules of Procedure and the applications in the file, [it has] stated [...] not only verbally[,] but also in writing, [...] that it acknowledges the responsibility made by the [previous] President of the Republic […], in accordance with the application by the […] Commission and the brief with pleadings, motions, and evidence] of the representatives of the […] victims. [The State] specifie[d] the aspects regarding which it acknowledges[...its] international responsibility […] and [expressed that it had] explicitly[…] stated [the] Articles that it deems breached by the State, which were also included in the applications by the parties.

38. In the second brief submitted by the State on April 23, 2004, once the position of the Commission and of the representatives regarding its acknowledgment of international responsibility was known (supra para. 31), it pointed out that, regarding the statement by "the representatives of the […] victims, […] the ideas stated regarding the existence of a genocidal policy are the representatives' own opinions or interpretations, for which reason [...] it reiterate[d] the content of paragraph 5 of the statement made at the beginning of the hearing."

Finally, at the public hearing Guatemala expressed "its deep regret for the facts that took place at and were suffered by the community of Plan de Sánchez, on July 18, 1982, for which reason on behalf of the State it apologize[d] to the victims, the survivors and the next of kin; as a first demonstration of respect, reparation, and as a guarantee of non recidivism."

Pleadings of the Commission

39. At the first public hearing and in its brief filed on April 23, 2004, the Inter-American Commission expressed its positive appreciation of the statement made by Guatemala in the instant case and accepted the withdrawal of the preliminary objections filed by the State. The Commission also pointed out that in the statement by Guatemala, the State

acknowledges its international responsibility for violation of the rights cited in the prayers for relief in the application by the [Commission and] in the brief with pleadings by the petitioners, that is, the abridgment of the rights to humane treatment, to judicial protection, to fair trail, to equal protection, to freedom of conscience and of religion, all of them in combination with the obligation to respect rights. Furthermore, the right to privacy and to freedom of expression and of association. In this regard, […] the [Commission] note[d] that the concept of international responsibility of the State was specified regarding the violations committed by its agents, with respect to the August 9, 2000 statement by Guatemala.

The Commission also noted that in its statement Guatemala acknowledged the facts that were the object of the application and of the brief with pleadings, motions, and evidence by the representatives of the victims and their next of kin. The Commission reached the conclusion that, "as the Historical Elucidation Commission also concluded, the facts took place within the framework of a genocidal policy directed against the Mayan people." Therefore, it asked the Court to consider the facts proven and to include them in the judgment it will issue in the instant case.

40. The Commission also accepted the acknowledgment of international responsibility made by the State and asked the Court to rule on its legal effects, pursuant to Article 53(2) of the Rules of Procedure. Finally, the Commission declined the State's proposal of a friendly settlement and asked the Court to move on to the reparations stage.

Pleadings of the representatives of the victims and their next of kin

41. During the first public hearing and in their April 23, 2004 brief, the representatives of the victims and their next of kin also referred to the acknowledgment of international responsibility made by the State. In this regard, they expressed that they "appreciate[d] the acknowledgment of

international responsibility" made by Guatemala. The representatives pointed out that the acknowledgment made involved acceptance of the merits regarding the facts alleged by the Commission in its application and the pleadings set forth in the brief with pleadings, motions, and evidence submitted on September 27, 2002. They also noted that, through this acknowledgment, "the State accept[s] the impunity that still prevails regarding the Plan de Sánchez [Massacre], which took place in the framework of a genocidal policy," and they did not accept the State's proposal of a friendly settlement to establish reparations. They also asked the Court to hear the witnesses and expert witnesses who were summoned, because this constitutes a form of reparation and of full restitution to the community as a whole. Therefore, the representatives asked the Court to begin the reparations phase.

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PROVEN FACTS

42. The Court deems that the following facts are part of the background and context that it will address in exercising its competence.

With respect to the historical context

42(1) between 1962 and 1996 there was a domestic armed conflict that entailed great human, material, institutional, and moral costs;
42(2) during the domestic armed conflict, the State applied the so-called "Doctrine of National Security" as a response to the action or doctrine of the insurgent movement. In the framework of this doctrine, there was a growing intervention of military power to face subversion, a concept that encompassed any person or any organization that constituted any form of opposition to the State, and therefore it became equivalent to that of "domestic enemy;"
42(3) on March 23, 1982, as a result of a coup d'etat, a Ruling Military Junta was set up in Guatemala, headed by José Efraín Ríos Montt and its other members were Horacio Egberto Maldonado Schaad and Francisco Luis Gordillo Martínez; [FN4]
42(4) in April 1982 the Ruling Military Junta of the time issued the "National Security and Development Plan," which set forth national military, administrative, legal, social, economic, and political objectives. Said Plan identified the main areas of conflict. The Military Junta and the High Command designed and implemented a military campaign plan called "Victory 82," for which they used new strategic definitions within the framework of counterinsurgency and the objectives of the "National Security and Development Plan;"
42(5) the most violent period of this conflict was between 1978 and 1983, when the military operations focused on the regions of Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the southern coast and Guatemala City. During these years, counterinsurgency policy in Guatemala was characterized by "military actions geared toward destruction of groups and communities as well as forced geographic displacement of indigenous communities when they were considered potential supporters of the guerrilla forces"; [FN5]
42(6) these military actions, known to or ordered by the highest authorities of the State, consisted primarily of killing defenseless population, known as massacres and "scorched earth operations." According to the Report by the Historical Elucidation Committee, approximately 626 massacres were carried out by means of cruel actions directed at eliminating persons or

groups of persons previously identified as targets of the military operations and with the aim of causing terror as a mechanism of social control;
42(7) the Guatemalan Army, based on the "Doctrine of National Security," identified the members of the Mayan indigenous people as "domestic enemies," as they deemed that they were or could be the social base for the guerrilla forces. These people suffered massacres and "scorched earth operations" that involved complete destruction of their communities, houses, livestock, harvests, and other means of survival, their culture, the use of their own cultural symbols, their social, economic, and political institutions, their cultural and religious values and practices;
42(8) the process of peace negotiations in Guatemala began in 1990 and was completed in 1996. The Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional de Guatemala (URNG), signed twelve agreements, with participation by Civil Society. One of these agreements, signed on June 23, 1994, dealt with "the establishment of the Historical Elucidation Committee regarding Human Rights violations and the acts of violence that have caused suffering among the Guatemalan population." The Historical Elucidation Committee began its work on July 31, 1997 and delivered its report on February 25, 1999. Said Committee studied numerous massacres, including those of the Municipality of Rabinal, Department of Baja Verapaz in Guatemala;

[FN4] In its application, the Commission pointed out that "the military command structure, as regards Rabinal, was the following at the time of the facts:"
i. President of the Republic and Minister of Defense.
ii. Head of the Army Chiefs of Staff.
iii. Head of the Military Intelligence Department.
iv. Commander of the Military Base at Cobán.
v. Commander of the Military Detachment at Rabinal.
vi. Officers.
vii. PAC, "Judiciales" or Judicial Officers, "Comisionados Militares" or Military Commissioners and Soldiers.
[FN5] See Brief with the application by the Inter-American Commission on Human Rights dated July 31, 2002, sheet 12, paragraph 51.

With respect to the village of Plan de Sánchez

42(9) the Municipality of Rabinal is one of the eight municipalities of the Department of Baja Verapaz, which is located in the central region of Guatemala. This Municipality includes the municipal capital or main urban area, fourteen villages and sixty hamlets. One of the villages of this municipality is Plan de Sánchez, located nine kilometers from the municipal capital, in the southern part of the Chuacús range and on the road toward the village of Concul;
42(10) the area is inhabited primarily by members of the Mayan indigenous people, specifically of the achí linguistic community;
42(11) since early 1982, the Guatemalan Army had a strong presence in the area of Rabinal, including the village of Plan de Sánchez and its neighboring communities. The military commissioners [FN6] and the members of the army regularly asked the communities of the area

about movements of men in the area, intimidating and threatening the local population with their weapons;
42(12) the inhabitants of Plan de Sánchez were accused by the military of belonging to the guerrilla forces, as they refused to participate in the Civil Defense Patrols or Patrullas de Autodefensa Civil [FN7] (hereinafter the "PAC"). Therefore, in Plan de Sánchez there was a heavy climate of terror that led the men to leave the community to hide from the army;
42(13) despite the terror prevailing in the area, some inhabitants of Plan de Sánchez filed petitions before the Justice of the Peace of Rabinal regarding the constant threats that they received from members of the army, military commissioners, and members of the PAC. [FN8] These petitions were never addressed by the judicial authorities. Instead, those who filed them were fined;
42(14) in early July, 1982, a plane flew over the village of Plan de Sánchez and bombed places near the inhabited areas. On July 15, 1982 an army unit set up a temporary camp at said village, with the aim of inspecting the houses, inquiring into the whereabouts of the men of the community, and threatening its inhabitants;

[FN6] The representatives of the victims and their next of kin in their brief with pleadings, motions, and evidence pointed out that "the position of Military Commissioner [Comisionado Militar] was established in 1939 by then President Jorge Ubico to facilitate oversight of the rural communities by the Army. In 1954 they became part of the Military Reserve, pursuant to the provisions of Decree 79. This Decree, which established the Department of Organization, Instruction and Training of the Military Reserve as a body under the Army Chiefs of Staff, regulated and defined as follows the tasks of the Commissioners:
Article 1: 1. To act as Agents of the military authorities.
2. To carry out such military missions as they may be ordered to conduct...
3. To control and oversee the population.
Article 2: The Military Commissioners and assisstants are members of the army when they are carrying out a mission ordered by the competent military authorities, and are therefore subject to military jurisdiction.
[…] the Military Commissioners played a key intelligence role in the rural areas. [...] The functions of the military commissioners were currently abolished by the Government of Ramiro de León Carpio, these persons continued to have enormous power and to carry out abusive acts against the population of rural Guatemala […]."
[FN7] The representatives of the victims and their next of kin in their brief with pleadings, motions, and evidence pointed out that the PAC "were established in 1981 by then President General Lucas García as a paramilitary force to conduct military operations in the rural areas. Shortly after they were established, Minister of Defense Benedicto Lucas stated with respect to the PAC:
'Arming civilians for any act, whether personal or communal, is forbidden by the Constitution, but it is legal when said groups are incorporated in the Army.'
[…] The responsibility of the Army for the organization and training of the PAC was set forth in Decree 19-86, published on January 10, 1986. Participation in the patrols was mandatory and controlled by the Military Commissioners. Refusal was severely punished, sometimes with death. In 1983 the number of patrol members was 700,000 and in 1985 it was one million."

[FN8] The representatives of the victims and their next of kin in their brief with pleadings, motions, and evidence pointed out that "[...i]n 1985 it was estimated that roughly 10,000 civilians performed military functions as Military Commissioners and 1,000,000 were members of the PAC. Civil collaborators of the Judicial Police, called 'orejas', have not been studied in depth:
References regarding the number of civil patrol members throughout the country begin in 1981 with approximately 25,000 men. According to official Army figures, 'in 1982 there were one million civil patrol members.' Since the reestablishment of civilian government in 1986, their number began to decline: 'in 1996 there were less than 40,000 organized;' according to the Army, that year there were 270,906 registered in 15 departments throughout the country.
[…] These three groups, plus other civilian collaborators, are the lowest echelon of the hierarchical military structure. In the case of the Plan de Sánchez massacre, these civilian elements were under the control of the Military Detachment at Rabinal, which in turn received orders from the Military Base at Cobán. To gather information and carry out military operations, the military and civilians are under the authority of the Intelligence Groups (G2) and the Operational Groups (G3) within the Guatemalan Army. Since 1981, the representatives of these groups within each Base coordinated their strategy with the Intelligence Department and the military commanders in the Government."

With respect to the Plan de Sánchez Massacre

42(15) Sunday, July 18, 1982 was market day at Rabinal. This was one of the most active days at the municipal capital due to its religious and commercial activities. The inhabitants of neighboring villages came through Plan de Sánchez toward their communities;
42(16) at approximately 8:00 o'clock on the morning of July 18, 1982, two 105 mm caliber mortar grenades were fired into the community of Plan de Sánchez, and they fell to the east and west of the village;
42(17) between 2:00 and 3:00 in the afternoon, a commando of roughly 60 persons arrived at Plan de Sánchez, including members of the army, military commissioners, "judiciales," [FN9] civil informers and patrol members, wearing military uniforms and with assault rifles. Some members of the commando kept watch on the entrance and exit points to and from the community, stopping the inhabitants who were returning from Rabinal to their communities, and others went door by door rounding up the townspeople. At that time, several people were able to hide, especially the men, as they believed that they would not go after the women and the boys and girls. Some witnesses identified "judiciales" Francisco Orrego, Carlos Orrego and Santos Rosales and two of the military officers in charge of the patrol, Captain Solares and Lieutenant Díaz. The officers were stationed at the Cobán base. Some members of the army were from Concul, Plan de Sánchez and Xococ. The "judiciales" were from Pachalum, Pichec, and Rabinal;
42(18) the girls and young women were taken to one place, while the older women, the men and the boys were gathered at another. Roughly twenty girls between the ages of 12 and 20 were taken to a house where they were mistreated, raped, and murdered. The other boys and girls were separated and beaten to death;
42(19) other detained persons were forced to gather in another house and in its yard. About 5:00 p.m., members of the commando threw two hand grenades into the house and then fired indiscriminately against the persons there;

42(20) inhabitants of the village of Plan de Sánchez and neighboring communities heard gunshots for over two hours, until 8:00 p.m. Afterwards, members of the commando set fire to the house and to the bodies of the murdered persons in the yard. The commando remained at Plan de Sánchez until close to 11:00 p.m. and returned to Rabinal;
42(21) approximately 268 persons were executed in the massacre, most of them members of the Maya achí people and some non-indigenous individuals who lived in other neighboring communities such as Chipuerta, Joya de Ramos, Raxjut, Volcanillo, Coxojabaj, Las Tunas, Las Minas, Las Ventanas, Ixchel, Chiac, Concul and Chichupac; [FN10]

[FN9] The representatives of the victims and their next of kin pointed out in the brief with pleadings, motions, and evidence that "the 'judiciales' were originally an investigative corps of the Police. Although they ceased to exist officially as a corps before the massacre stated in our petition, they nevertheless continued to function and were associated with the Military Intelligence Department. Since the communities in this municipality are very small, most of the "Judiciales" are known to all as they also threaten and intimidate people openly and with complete impunity."
[FN10] This figure was given by the Commission and the representatives of the victims and their next of kin; however, it is not a definitive one, given the difficulties that they pointed out regarding establishment of the figures.

With respect to events after the Plan de Sánchez Massacre

42(22) on the morning of July 19, 1982, the residents who had not been there that day or who had escaped returned to the village of Plan de Sánchez and found the house that had been burned still smolderig and most of the corpses unrecognizable. None of the victims found inside the house could be recognized, due to the high temperatures to which their bodies had been subjected. The remains of the victims located in the yard were partly covered by the roof of the house that had fallen on them, and they had firearm wounds mainly in the head, chest and back. In the afternoon, some domestic animals began to eat the remains of the burnt victims;
42(23) the military commissioners of Chipuerta and Concul who arrived at the place went to the military base at Rabinal to ask what they should do with the bodies of the victims. They returned to the village between 3:00 and 4:00 in the afternoon together with members of the local PAC, and they ordered the survivors to rapidly bury all the corpses at the site of the massacre, threatening that if they did not do it within one hour, the community would be bombed. Most of the bodies were buried at the same site of the massacre. Several relatives of the victims from the village of Concul took the bodies to bury them at their cemetery;
42(24) members of the commando plundered and destroyed the dwellings, stole their belongings, their food, their animals and their personal effects, such as: marriage certificates, identification documents and land titles; they returned several times to the village of Plan de Sánchez for this purpose and they threatened the townspeople who had returned. Out of fear of being murdered, the survivors took turns watching the entrances to the village, to be able to continue with their chores and their work in the fields;
42(25) those who survived the massacre, fearful due to what had happened, the threats and harassment by the commissioners, the members of the PAC and the army, decided to gradually

leave the village during the weeks and months after the massacre. Some of the survivors sought refuge in the mountains and in other places such as Chol, San Gabriel, and the capital. Those who sought refuge in the mountains took no food with them and had little clothing. Given their precarious conditions, they became ill, especially the children and the elderly, and some even died. The displaced persons were chased by the PAC and by the army. The displaced survivors stayed away from the community for several years;

42(26) two and a half years after the massacre, siblings Buenaventura Manuel Jerónimo, Benjamín Manuel Jerónimo, Juan Manuel Jerónimo, and Salvador Jerónimo Sánchez returned to the municipal capital of Rabinal and went before military commissioner Lucas Tecú, who allowed them to remain in the area, threatening them into entering the PAC and patrolling villages near the municipal capital. The military commissioner ordered that they should not be allowed to work on their land, rebuild their dwellings, or live in the village of Plan de Sánchez. They had to live for a year in the village of Coxojabaj, two kilometers from that of Plan de Sánchez. Other families of displaced survivors who returned were forced to live in the municipal capital at Rabinal;

42(27) afterwards, the survivors were allowed to work on their lands. In 1985 they were authorized to live in the village of Plan de Sánchez, under constant watch and threats by the army and by the military commissioner. Many survivors, lacking financial means for their livelihood, were forced to enter the army as the only means to earn enough to buy seed, wood, sheet metal and roof tiles to be able to establish themselves once again in the community of Plan de Sánchez.

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42(28) In 1987, roughly twenty families had returned to the village. However, these families continued to suffer threats by the military commissioner, who repeatedly warned them that they should remain silent regarding the facts pertaining to the massacre, if they did not want to face problems that might cause their death; the commissioner also forced the men of those families to enter the PAC. This obligation continued until 1996, when the PAC were legally disbanded;

42(29) during the years after the massacre, a justifiable fear of persecution, threats and constant control by the military authorities in the area inhibited the survivors and the next of kin from seeking justice and denouncing the clandestine cemeteries located in the village. In 1992 the survivors and the next of kin of the persons executed during the massacre informed the judicial authorities, giving them the necessary information to locate the clandestine cemeteries. After supplying this information, they were harassed and threatened by agents of the State;

42(30) the community of Plan de Sánchez was only able to bury some of their next of kin in accordance with Mayan ceremonies, their beliefs and their religion, beginning in 1994;

With respect to the legal steps

42(31) on December 10, 1992, a petition was filed regarding the existence of a clandestine cemetery at the village of Plan de Sánchez. On May 7, 1993 the Human Rights Ombudsman [Procuraduría de los Derechos Humanos] filed a petition, on behalf of the community, before the Public Prosecutor's Office regarding the massacre that took place at the village of Plan de Sánchez. On August 12, 1993 the social pastoral of the Diocese of Verapaz informed the Human Rights Ombudsman in Baja Verapaz of the location of the clandestine cemetery, and this information was given to the judicial authorities;

42(32) the judicial authorities opened case No. 391/93 at the Trial Court of Salamá, Baja Verapaz and at the Public Prosecutor's Office, where it was given the same file number, in accordance with the criminal procedural system in force at the time;
42(33) on June 6, 1994 the Guatemalan Forensic Anthropology Team (hereinafter "EAFG") conducted the exhumation procedure, which began on the 8th of that same month and year, in the presence of the Human Rights Ombudsman. The anthropological work concluded in late August, 1994. The outcome of this procedure was the exhumation of the remaining bones of 84 persons, from 21 mass graves located in the middle of the village of Plan de Sánchez. On April 7, 1995 the EAFG delivered the forensic anthropology study report to the Public Prosecutor's Office of the Disctrict of Salamá, attaching to said report the ballistic material recovered from the exhumations;
42(34) while the EAFG was conducting the exhumations in the community of Plan de Sánchez, they noted the existence of another clandestine grave that had not been mentioned in the original petition; it was found one kilometer southeast of the mass graves located in the middle of the village, and was called mass grave No. 22;
42(35) on August 10, 1994 the Human Rights Ombudsman's Office asked the Public Prosecutor's Office to expand the exhumation procedure to common grave No. 22. On August 12, 1994 the Public Prosecutor's Office asked the Trial Court Judge of Baja Verapaz to expand said procedure. The Judge decided that, since it was a new fact, the procedure should be conducted by the Public Prosecutor's Office, in view of the entry into force of a new criminal procedures code. On August 25 and September 30, 1994, the Human Rights Ombudsman's Office asked the Public Prosecutor's Office to authorize the exhumation of the bodies found in common grave No. 22. On July 28, 1995 and February 27, 1996 the Human Rights Ombudsman's Office once again requested said expansion. Finally, on May 3, 1996, the Public Prosecutor's Office asked the Trial Court Judge to order exhumation of common grave No. 22 and to appoint the forensic anthropology experts. On May 6, 1996 that Judge ordered the new procedure to begin, under No. 344/95;
42(36) on August 14, 1996 the EAFG began its investigation of common grave No. 22 of the clandestine cemetery at the village of Plan de Sánchez. The archaeological phase was completed on August 16, 1996, and 4 skeletons were exhumed. On December 22, 1997 the EAFG submitted the forensic anthropology report to the District Prosecutor of the Public Prosecutor's Office of Salamá, Baja Verapaz;
42(37) on September 2, 1996 the Human Rights Ombudsman's Office issued a Resolution regarding the massacres at Plan de Sánchez, Chichupac and Río Negro, all of them in Rabinal, Baja Verapaz. Said Resolution established the responsibility of the agents of the State, including the PAC, the military commissioners, the members of the army and high-ranking officers, for not having protected the local population and for trying to cover up the crimes to ensure impunity of the direct perpetrators and masterminds. The Resolution of the Human Rights Ombudsman's Office concluded that these massacres were carried out as part of a premeditated State policy;
42(38) on February 13, 1997, Salvador Jerónimo Sánchez, Buenaventura Manuel Jerónimo, Adrián Cajbon Jerónimo, Benjamín Manuel Jerónimo, Pedro Grave Cajbon, and Juan Manuel Jerónimo, asked the Criminal Trial Court Judge of Baja Verapaz to admit them as ancillary complainants in proceedings No. 391/93 and 344/95. They also asked the Public Prosecutor's Office to establish, through the National Defense Ministry, the names of the members of the military patrol that carried out the massacre in the village of Plan de Sánchez, the hierarchical structure of the army at the time, the identity of the officers who headed it, and their

responsibilities. On the other hand, they asked that the expert ballistic analysis be conducted on the material found at the clandestine cemetery, that the statements of the witnesses be taken, and that the forensic anthropology reports on the 22 mass graves exhumed at Plan de Sánchez be assessed. On February 25, 1997, the Criminal Trial Court Judge of Baja Verapaz admitted the petitioners as ancillary complainants;

42(39) on June 4 and July 24, 1997 and on January 29, 1998 the complainants asked the Public Prosecutor's Office to conduct the expert report of the ballistic material. On August 28, 1997 the Trial Court Judge of Cobán, where criminal investigation No. 1618/97 had been transferred, ordered the Prosecutor's Office to conduct the expert ballistic analysis. Given the possibility of the ballistic material being lost, on November 24, 1997 the complainants asked the Criminal Trial Court Judge of Cobán for information on the place where said material was kept and the official in charge. On November 25, 1997 said Judge requested information from the Trial Court Judge of Salamá on the location of the ballistic material. On January 26, 1998 the complainants publicly denounced the loss of that material, and on May 29, 1998, June 5, 1998, August 27, 1998, and January 21, 2000 briefs they asked that its whereabouts be investigated and the respective analysis be carried out;

42(40) the ballistic material from mass graves No. 1 to No. 21 remained lost from January 1998 to early 2000, when it was found at the seat of the Public Prosecutor's Office of Salamá. On February 10, 2000 the Public Prosecutor's Office of the District of Salamá asked the Ballistics Section of the Technical Scientific Department of the Public Prosecutor's Office to conduct the laboratory analysis of the ballistic material, and that Section submitted its report on March 7, 2000;

42(41) on May 27, 1997 the complainants made their statements before the Public Prosecutor's Office and they identified soldiers Eusebio Galeano, Julián Acoj Morales, Mario Acoj Morales, Andrés Galeano, Military Commissioner Moisés Manuel, uniformed G-2 members Carlos Orrego Oliva, Francisco Orrega García, Rosalio Tecú, Santos Rosales, Pedro Melchor, Everardo García, Jesús Torres, Roberto Galeano Manuel and Roel Augusto Juárez, and the military officers who headed the patrol, Lieutenant Díaz and Captain Solares, as the alleged direct perpetrators of the massacre. They accused the high command of the army at the time of being the masterminds. They also requested that the pertinent investigation be conducted for justice to be done;

42(42) on May 27 and June 4, 1997 the complainants reiterated their request to the Public Prosecutor's Office to obtain information from the National Defense Ministry on the members of the patrol that committed the massacre. On June 18, 1997 the complainants asked the public prosecutor to request that the case Judge issue "the arrest warrant against the accused and for it to be immediately served for the crimes of murder, aggravated rape, aggravated theft, genocide, and abuse of authority." On August 27, 1997 the complainants also asked the Trial Court of Cobán to request the required information from the National Defense Ministry;

42(43) on August 28, 1997 the Trial Court Judge of Cobán ordered the Public Prosecutor's Office to ask the National Defense Ministry to supply the complete names of Captain Solares and Lieutenant Díaz. On November 12, 1997 the Public Prosecutor's Office asked the National Defense Ministry to inform the Public Prosecutor's Office whether on July 18, 1982 officers Lieutenant Díaz and Captain Solares were on duty at the military detachment in Rabinal, to provide their complete names, their rank, whether they were in active service in that institution, as well as their location, and that of soldiers Julián Acoj, Mario Acoj, Eusebio Galeano, Roberto Galeano, and Moisés Manuel;

42(44) on November 24, 1997 the complainants asked the Criminal Trial Court to expand the August 28, 1997 Resolution and to ask the National Defense Ministry for the names of the members of the army and of the civil self-defense patrols commanded by Lieutenant Díaz and Captain Solares and for details on the hierarchical structure of the Guatemalan Army at the time of the facts. On November 25, the Court granted the request and ordered the National Defense Ministry to supply said information;
42(45) on January 21, 2000 the complainants asked the Public Prosecutor's Office to instruct the National Defense Ministry to state the name of the Minister of Defense at the time of the massacre, of the Commander of the General Chiefs of Staff, of the Commanders of military zone No. 5 with its headquarters at Salamá, of the Commanders of the detachment headquartered at Rabinal, and of the officers who were in command of the Guatemalan Army the day of the facts. On May 12, 2000 the complainants reiterated their request;
42(46) file No. 1618/97 contains no reply by the National Defense Ministry to the requests for information made by the Guatemalan judicial authorities. No agent of the State, including those accused by the complainants, was summoned to render testimony, for which reason no one was legally included in the investigation. To date, the status of the criminal proceeding is unknown;

With respect to the persons executed in the Plan de Sánchez Massacre

42(47) to date, the following persons executed in the massacre have been identified: [FN11]
Alvarado Corazón, María Dolores; Alvarado Ixtecóc, Agustina; Alvarado Manuel, Héctor Rolando; Alvarado Padilla, Felipa de Jesús; Alvarado Raxcacó, Antonia; Alvarado Raxcacó, Jaime; Alvarado Raxcacó, Mario; Alvarado Raxcacó, Nolverto; Álvarez Pérez, Victoria; Álvarez Pérez, Elisa; Ampérez Tecú, Evaristo; Ampérez, Juana; Buenaventura López, Juan; Cahuec, Jerónima; Cajbón Cornelio; Cajbón Galeano, Dionisio; Cajbón Galeano, Francisca; Cajbón Grave, Carmela; Cajbón Grave, Ismelda; Cajbón Grave, Juana; Cajbón Grave, Rodrigo; Cajbón Manuel, Balvina; Cajbón Morales, Juana; Cajbón, Francisca; Cajbón, Pedrina; Corazón Jerónimo, Dominga; Corazón Tecú, María; Corazón, Andrés; Corazón, Fabiana; Corazón, Francisca; Corazón, Juan; Cortéz Tecú, Victoria; Cujá Matías, Alejandra; Cujá Matías, Cleotilde; Cujá Matías, Margarita; Cujá Matías, Rufino; Cujá Sánchez, Anastacio; Chajáj Luis, Mariana; Chajáj, Fabiana; Chajáj, Matilda; Chen Depaz, Juan; Chinchilla Guzmán, Magdaleno; Galeano Rojas, Genaro; Galeano Galeano, Fabiana; Galeano Galeano, Francisca; Galeano Galeano, María; Galeano González, Juliana; Galeano González, Rosario; Galeano López, Narcisa; García Caballeros, Gumercinda; García García, Daniel; García López, Santos; García López, Timoteo; González, Mercedes; Grave Cajbón, Angelina; Grave Cajbón, Esmelda; Grave Cajbón, Esteban; Grave Cajbón, Francisco; Grave Cajbón, Hilda; Grave Cajbón, José Cruz; Grave Cajbón, Juana; Grave Cajbón, Maria Dominga; Grave Cajbón, María Elena; Grave Juárez, Felisa; Grave Manuel, Guillerma; Grave Ramírez, Lucía; Grave Ramírez, María; Guzmán Alvarado, Benjamín Orlando; Hernández Galeano, Pilar; Hernández Galeano, Roberto; Hernández, Pablo; Ivoy Acoj, Demesia; Iboy Morales, Faustina; Iboy Morales, Raquel; Iboy, Demesio; Ic Manuel, Florencia; Ic Rojas, María Dolores; Ic, Lorenza; Ixpatá, Josefa; Ixpatá, Martina; Jerónimo Corazón, Cecilio; Jerónimo Corazón, Francisca; Jerónimo Corazón, Jacinto; Jerónimo Corazón, Julia; Jerónimo Corazón, Margarita; Jerónimo Corazón, Silvia; Jerónimo Corazón, Virgilio; Jerónimo Chajaj, Esteban; Jerónimo Grave, Julia; Jerónimo Grave, Narciso; Jerónimo Grave, Vicenta; Jerónimo Grave, Victoria; Jerónimo Ixpatá, Félix; Jerónimo Ixpatá, Maximiliana; Jerónimo Raxcacó, Hilda; Jerónimo Raxcacó, Laura; Jerónimo Raxcacó, Lidia; Jerónimo Raxcacó, María; Jerónimo

Sánchez, Paulina; Jerónimo Sánchez, Elvira; Jerónimo Sánchez, Pedro; Jerónimo Tecú, Bernardina; Jerónimo Tecú, Candelaria; Jerónimo Tecú, Delfina; Jerónimo Tecú, Filadelfo; Jerónimo Tecú, Francisca; Jerónimo Tecú, Gabina; Jerónimo Tecú, Rosalía; Jerónimo, Rufina; Juárez Ampérez, Lucas; Juárez Ampérez, Prudencio; Juárez Ampérez, Salvador; Juárez Ampérez, Teresa; Juárez Coloch, Agustina; Juárez Chen, Higinio; Juárez Grave, Ciriaco; Juárez Manuel, Felisa; Morales, Santiago; Juárez, Susana; Juárez, Felícita; Juárez, María; Juárez, Martín; López Cahuec, Felipa; López, Fidelina; López, Juan; Manuel Jerónimo, Elda; Manuel Jerónimo, Angelina; Manuel Jerónimo, Graciela; Manuel Jerónimo, Rosa; Manuel Xitumul, Baudilio Enrique; Manuel Xitumul, María Hilda; Manuel Xitumul, María Zoila; Matías Pérez, Pedrina; Morales Corazón, Bonifacio; Morales Fernández, Venancia; Morales Ivoy, Bernabela; Morales Iboy, Martina; Morales Pérez, Ricarda; Morales Pocop, Martín; Morales Xitumul, Fidel; Morales Xolop, María Senaida; Pérez García, Raquel; Raxcacó Juárez, Marcela; Raxcacó Tecú, Francisco; Raxcacó Tum, Marcela; Reyes Guzmán, Eduardo; Reyes Mejicanos, Arnulfo; Rojas Galeano, Francisco; Sánchez Oxlaj, María Dolores; Sesam Tecú, Jesús; Soto Tejeda, Eustaquio; Tecú Chajáj, Benedicto; Tecú Chajáj, Daniel; Tecú Chajáj, Gabina; Tecú López, Francisco; Tecú Manuel, Francisco; Tecú Manuel, Maria Eduviges; Tecú Manuel, Sara Leonora; Tecú Morales, Apolonio; Tejeda, Minor; Tejeda, Virgilio; Tejeda Orellana, Víctor; Toj Manuel, Francisco; Toj Manuel, María Clara; Toj Manuel, Rosendo; Xitumul Martínez, María; Xitumul, Petronila; Xitumul Iboy, Rufina; Xolop Hernández, Agustina; and Xolop, Martina; and

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[FN11] The names stated are those in the list included in the footnote on page seven of the application brief, in which the Commission pointed out that "the petitioners submitted to the [Commission a] list of 170 persons executed in the massacre who ha[d] been identified by January [2002]," while their might be discrepancies among the various figures resulting from efforts to identify and locate the victims.

With respect to the survivors and next of kin of the persons executed in the Plan de Sánchez Massacre

42(48) the following persons have been identified as survivors and next of kin of the persons executed in the Plan de Sánchez Massacre: [FN12]
Salvador Manuel Jerónimo, Juan Manuel Jerónimo, Adrián Cajbón Jerónimo, Pablo Grave Jerónimo, Benjamín Manuel Jerónimo, Florencia Cajbon Jerónimo, Carmen Corazón Jerónimo, José León Alvarado, Nicolasa Ixtecoc, Víctor Morales Alvarado, Dolores Morales Alvarado, Jerónimo Morales Alvarado, María Concepción Morales Alvarado, Lázaro Alvarado Raxcacó, Buenaventura Manuel Jerónimo, Esteban Manuel Jerónimo, Felisa Padilla, Juan Álvarez Pérez, Felipe Antonio Álvarez Alvarado, Patricia Álvarez Alvarado, Leticia Álvarez Alvarado, Silvia Álvarez Alvarado, Lucrecia Álvarez Alvarado, Víctor Manuel Reyes García, María Cristina Reyes Álvarez, César Augusto Reyes Álvarez, Jorge Luis Reyes Álvarez, Juana Álvarez Pérez, Jorge Álvarez Pérez, Juan Álvarez Pérez, Julia Raxcacó Manuel, Hermenegildo Alvarado Raxcacó, Simeona Corazón Galeano, Lucas Juárez Ampérez, Eulalio Grave Ramírez, Margarita Grave Cajbón, Tomás Grave Cajbón, Valeria Grave Cajbón, Albino Cajbón, José María Cajbón Grave, Lorenza Cajbón Grave, Emiliano Cajbón Grave, Luis Cajbón Oxlaj, Balbino Cajbón Cortéz, Paulina Grave Oxlaj, Jesús Cajbón Grave, Margarita Osorio Manuel, Pablo Grave

Cajbón, Pedro Grave Cajbón, Domingo Cajbón Manuel, Santa Cajbón Manuel, Tomás Cajbón Manuel, Bartolomé Cajbón Manuel, Basilio Tecú Chajáj, Gregoria Tecú Chajáj, Juana Tecú Chajáj, Julio Tecú Chajáj, Petronila Tecú Chajáj, Toribio Tecú Chajáj, Paulina Guzmán, Celestino Chinchilla Guzmán, Narcisa Corazón Jerónimo, Rogelia Jerónimo Corazón, Tomasa Jerónimo Corazón, María Aurelia Jerónimo Corazón, Juan Cajbón, Francisco Cortéz Xitumul, Juliana Tecú Grave, Alejandro Cortéz Tecú, Florencia Cortéz Tecú, Cristina Cortéz Tecú, Fidel Cortéz Tecú, Efraín Cortéz Tecú, Juana Cortéz Tecú, Natividad Cortéz Tecú, Justina Sánchez, Demetrio Cajbón Galeano, Francisco Rojas Ic, Francisca Galeano Galeano, Marta Galeano, Ramón Rojas Ic, Humberto Rojas, Domingo Ic Rojas, Leocadia Ic Rojas, Salomé Ic Rojas, Virgilio Ic Rojas, Francisca Caballeros, Celestino Morales García, Benedicto Morales García, Florentino Morales García, Hermelinda Morales García, Pedrina Morales García, Rufino Morales García, Carlos Enrique Caballeros, Froilán García Caballeros, Domingo García Caballeros, María García Caballeros, Pablo García Pérez, María García Pérez, Josefina García Pérez, Maribel García Pérez, Mario García Pérez, Cornelio García Pérez, Francisco García López, Inocenta Morales López, Santos García Morales, Lauro García Morales, Hilario Galeano, Silvestre Galeano, Bernardo Tecú González, Victoria Tecú González, Paulina Tecú González, Valerio Grave Cajbón, Eulalio Grave Ramírez, Alejandro Grave Oxlaj, Francisca Juárez Manuel, Jesús Grave Tecú, Valentina Grave Tecú, Plácido Jerónimo Grave, Andrea Ramírez, Juan Grave Ramírez, Tomás Jerónimo Sánchez, Pablo Guzmán Reyes, Héctor Guzmán Alvarado, Paulina Guzmán Alvarado, Jesús Hernández González, Modesta Hernández, Felipe Hernández Galeano, Juana Hernández Galeano, María Hernández Galeano, Ventura Hernández Galeano, Elías Hernández Galeano, Jacinto Ic Sesám, Antonia Manuel Sis, María Modesta Ic, Juliana Rojas, Domingo Ic Rojas, Humberto Rojas, Leocadia Rojas, Ramón Rojas, Salomé Rojas, Virgilio Rojas, Alberto Morales Iboy, Eugenia Morales Iboy, Ceferino Jerónimo Ixpatá, Rosa Jerónimo Ixpatá, Juana Jerónimo Ixpatá, Pablo Jerónimo Ixpatá, Jerónimo Jerónimo Ixpatá, Gregoria Jerónimo Ixpatá, Roberto Jerónimo Ixpatá, Carlos Jerónimo Sánchez, Hermenegildo Jerónimo Sánchez, Salvador Jerónimo Sánchez, Plácido Jerónimo Grave, Natividad Raxcacó Juárez, Cecilio Raxcacó Juárez, David Raxcacó Juárez, Jesusa Raxcacó Juárez, Pedro Raxcacó Juárez, Rosa Raxcacó Juárez, Alberto Morales Juárez, Francisco Morales Juárez, José Morales Juárez, María Morales Juárez, María Juárez Manuel, Darío López Juárez, Julia López Juárez, Regina López Juárez, Roberta López Juárez, Emiliana López Juárez, Emiliana Grave López, Corazón Manuel Ampérez, Angela Juárez Chen, Abelino Juárez Grave, Faustina Juárez Grave, Juana Juárez Grave, Leoncio Juárez Grave, María Juárez Grave, Paula Juárez Grave, Juana
Juárez Grave, Francisco García López, Guillermo Toj Manuel, Justina Sánchez, Eustaquio Morales Jerónimo, Bernardino Morales Jerónimo, Julián Morales Jerónimo, Toribio Morales Jerónimo, Vicente Orellana Morales, Miguel Orellana Morales, Gumercindo Morales Orellana, Eduviges Orellana, Pedro Morales Corazón, Eugenia Ivoy, Chabelo Morales Ivoy, Miguel Ángel Morales Ivoy, Viviana Morales Ivoy, Andrés Morales Ivoy, Bernardo Morales Ivoy, Herlinda Morales Ivoy, Emiliana Morales Ivoy, Natividad Morales Ivoy, Santos Morales Ivoy, Margarita Morales Pérez, Juan Morales Pérez, Julián Morales Pérez, César Augusto Morales Pérez, María del Carmen Morales Pérez, Pedrina Morales Xitumul, José Bolaj Jerónimo, Alberto Morales Iboy, Eugenia Morales Iboy, Emiliana Grave, Celestino Morales Pérez, Sarbelio Morales Pérez, Bernarda Morales Pérez, Aura Marina Morales Pérez, Raúl Morales Pérez, Angélica Morales Pérez, Carlos Morales Pérez, Antonio Pérez García, Miguel Pérez García, Julia Juárez, Rosa Raxcacó Juárez, Domingo Raxcacó Sesam, María Griselda Reyes Mejicanos, Pedrina Reyes Mejicanos, Hermelinda Reyes Mejicanos, Rogelia Reyes Mejicanos, Jesús Reyes Mejicanos,

Álvaro Rocael Reyes Mejicanos, Teresa Tecú, Pedro Raxcacó Sesam, Rufino Raxcacó Sesam, Catalina Raxcacó Sesam, Lucía Raxcacó Sesam, Enrique Sesam Tecú, Pedro Sesam Tecú, Serapio Sesam Tecú, Dionisio Sesam Tecú, Eustaquia Sesam Tecú, Albertina Sesam Tecú, Silveria Sesam Tecú, Zuleta Soto Tejeda, Maruca Martínez García, Pedrina Soto Martínez, Demetrio Soto Martínez, Pedro Soto Martínez, Isabel Soto Martínez, Martina Soto Martínez, Carmelina Soto Martínez, Zoila Soto Martínez, Serbelia Soto Martínez, Rodolfo Soto Martínez, Demetria Soto Tejeda, Cipriano Soto Tejeda, Irene Soto Tejeda, Hilario Soto Tejeda, Macario Soto Tejeda, Cecilio Soto Tejeda, Margarito Soto Tejeda, Sabino Soto Tejeda, Julián Tecú Chajáj, Cecilio Tecú Chajáj, Francisco Tecú Manuel, Leandra Chajáj, Lorenza Tecú Chajáj, Felisa Tecú Chajáj, Pedro Tecú Manuel, Bartolomé Tecú Manuel, Ricardo Tecú Manuel, Carlota Tecú Manuel, Victoria Tecú Manuel, María Marta Manuel Tecú, María Antonia Tecú Morales, Ana María Tecú Morales, Paulina Tecú Morales, Fermina Reyes Reyes, Bairon Estuardo Tejeda Reyes, Delvin Donaldo Tejeda Reyes, Víctor Aníbal Tejeda Reyes, María Elena Tejeda Reyes, Carmen Tejeda Orellana, Gregorio Tejeda Orellana, Bartolo Tejeda Orellana, Isabel Tejeda Orellana, Hilaria Tejeda Orellana, Sabina Tejeda, Mercedes Orellana García, Irena Tejeda Orellana, Odilia Tejeda Orellana, Telma Tejeda Orellana, Daniel Tejeda Orellana, Eulalio Tejeda, Everildo Tejeda, Antonio Tejeda, Guillermo Toj Manuel, and Margarita Iboy.

[FN12] The names are those in the list included in chapter 10 of the application brief, entitled "Particulars of the original complainants as well as of the victims and their next of kin," para. 265.

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Considerations of the Court

43. Article 53(2) of the Rules of Procedure of the Court provides that:

2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case and of the representatives of the alleged victims, their next of kin or their representatives, the Court, after hearing the opinions of the other parties to the case, will decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

44. The April 23, 2004 Order of the Court, in its Whereas section, pointed out that:

1. […] the State has waived all the preliminary objections raised in the November 1, 2002 reply to the application.
2. […] the State has acknowledged the facts and its international responsibility for violation of Articles 1(1), 5(1), 5(2), 8(1), 11, 12(2), 12(3), 13(2) paragraph (a), 13(5), 16(1), 21(1), 21(2), 24 and 25 of the American Convention on Human Rights in the instant case.
3. […] said acknowledgment expressed by the State […] does not interrupt the process of receiving evidence ordered with respect to reparations and legal costs.

And decided:

1. To deem all the preliminary objections filed by the State withdrawn.
2. To admit the acknowledgment of international responsibility made by the State, under the terms set forth in Whereas two of the [...] Order.
3. To continue the public hearing summoned through the February 19, 2004 Order of the President of the Inter-American Court of Human Rights, and to limit its subject-matter to reparations and legal costs in the instant case.
[…]

45. Likewise, the Court points out that the Inter-American Commission stated that "the […] purpose of the application is to submit to the jurisdiction of the […] Court the violations committed by agents of the Guatemalan State through denial of justice and other acts of intimidation and discrimination against the survivors and next of kin of the Plan de Sánchez [...] massacre that took place on July 18, 1982." The representatives of the victims and their next of kin, in turn, pointed out that "the issue to be decided by the [...] Court should be limited to identification of the violations of the Convention committed by the State after its acceptance of the competence of the Court on March 9, 1987."

46. The Court also deems, based on the expressions of the State, of the Inter-American Commission and of the representatives of the victims and their next of kin during the first public hearing, and in the April 23, 2004 briefs, and given the acceptance of the facts and the acknowledgment of international responsibility made by the State, that the controversy with respect to the facts that gave rise to the instant case has ended. [FN13]

[FN13] See Case of Bulacio. September 18, 2003 Judgment. Series C No. 100, paras. 27 and 38; Case of Barrios Altos. March 14, 2001 Judgment. Series C No. 75, para. 38; Case of Trujillo Oroza. January 26, 2000 Judgment. Series C No. 64, para. 40; Case of El Caracazo. November 11, 1999 Judgment. Series C No. 58, para. 41; Case of Benavides Cevallos. June 19, 1998 Judgment. Series C No. 38, para. 42; Case of Garrido and Baigorria. February 2, 1996 Judgment 2. Series C No. 26, para. 27; Case of El Amparo. January 18, 1995 Judgment. Series C No. 19, para. 20; and Case of Aloeboetoe et al.. December 4, 1991 Judgment. Series C No. 11, para. 23.

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47. Based on the above, the Court deems that the State did in fact incur international responsibility for violation of the rights set forth in Articles 5(1) and 5(2) (Right to Humane Treatment); 8(1) (Right to Fair Trial); 11 (Right to Privacy); 12(2) and 12(3) (Freedom of Conscience and Religion); 13(2) paragraph a and 13(5) (Freedom of Thought and Expression), 16(1) (Freedom of Association), 21(1) and 21(2) (Right to Property), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights and it did not fulfill its obligation to respect rights set forth in Article 1(1) (Obligation to Respect Rights) of that same Convention;

48. The victims of the violations mentioned in the previous paragraph are the persons listed by the Commission in its application (supra para. 42.48), and those that may subsequently be

identified, since the complexities and difficulties faced in identifying them lead to the presumption that there may be victims yet to be identified.

49. The Court, pursuant to its April 23, 2004 Order (supra para. 44), will issue a judgment at the appropriate time regarding the scope and amount of reparations and legal costs.

50. The Court deems that the acknowledgment of international responsibility made by the State constitutes a positive contribution to the development of this proceeding and to the effectiveness of the principles behind the American Convention on Human Rights.

51. With respect to the issue of genocide mentioned both by the Commission and by the representatives of the victims and their next of kin, the Court notes that in adjudicatory matters it is only competent to find violations of the American Convention on Human Rights and of other instruments of the inter-American system for the protection of human rights that enable it to do so. Nevertheless, facts such as those stated, which gravely affected the members of the Maya achí people in their identity and values and that took place within a pattern of massacres, constitute an aggravated impact that entails international responsibility of the State, which this Court will take into account when it decides on reparations.

VI. OPERATIVE PARAGRAPHS

52. Therefore,

THE COURT,

DECIDES:

unanimously,

1. To reaffirm its April 23, 2004 Order, in which it deemed that all the preliminary objections raised by the State were withdrawn and it admitted acknowledgment of international responsibility by the State.
2. To find that the controversy regarding the facts that gave rise to the instant case has ceased.
3. To find, in accordance with the terms of the acknowledgment of international responsibility made by the State, that the latter breached the rights set forth in Articles 5(1) and 5(2) (Right to Humane Treatment); 8(1) (Right to Fair Trial); 11 (Right to Privacy); 12(2) and 12(3) (Freedom of Conscience and Religion); 13(2) paragraph a and 13(5) (Freedom of Thought and Expression), 16(1) (Freedom of Association), 21(1) and 21(2) (Right to Property), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights; and that it did not fulfill the obligation to respect rights set forth in Article 1(1) of that Convention, as set forth in paragraphs 47 and 48 of the instant Judgment.
4. To continue hearing the instant case in the stage of reparations and legal costs.

Judges García Ramírez and Cançado Trindade made known to the Court their Separate Opinions, which are attached to this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on April 29, 2004.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

Alejandro Sánchez-Garrido
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary
So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE CONCURRING OPINION OF JUDGE SERGIO GARCIA-RAMIREZ IN THE JUDGMENT RENDERED IN THE CASE OF PLAN DE SANCHEZ MASSACRE V. GUATEMALA, ON APRIL 29, 2004

1. I concur with the judges of the Inter-American Court in issuing the judgment on the merits in the Case of Plan de Sánchez Massacre v. Guatemala, issued on April 29, 2004. I add this separate opinion, in which I examine certain points of said ruling, as well as its possible implications.

2. Solution of an adjudicatory case may be expressed in various judicial and extra-judicial acts, which may have repercussions on the former. Extra-judicial acts that pertain to agreements among the parties appear at any time prior to when the proceeding commences, and even during it, especially –as regards the inter-American system for protection of human rights- during the stage of processing before the Commission. With respect to the period of the court proceeding, strictly speaking, the solution occurs through one or several judgments that decide on the merits (declaratory) and on the corresponding consequences (sentencing), or by means of an act that establishes a specific judicial ruling that ends the dispute, in all its expressions, or a part of it, leaving solution of the remaining parts pending, subject to another ruling of the Court, whether or not prepared by new acts of the parties geared toward an agreement.

3. The rules of the Inter-American process reflect the latter possibility under the item regarding "Early Termination of the Proceedings" (Chapter V of the Rules of Procedure), which includes as causes for discontinuance of the case, both the decision of the applicant not to proceed with it and acquiescence by the respondent (Article 54). I have referred elsewhere to acquiescence within inter-American adjudicatory proceedings (see my Separate concurring opinions in the Case of Myrna Mack Chang v. Guatemala, November 25, 2003 Judgment, paras. 10, 11, 13, 17, 18, 21, 24 and 30; and Case of Bulacio v. Argentina, September 18, 2003 Judgment, para. 7). The amendments to the Rules of Procedure on November 25, 2003 recognized that said procedural act pertains to the "claims" of the applicant, not to the "facts" alleged by the applicant, the admission of which amounts, strictly speaking, to a confession.

4. Of course, neither acquiescence to the claims nor confession are binding for the Inter-American Court: confession is not, because the court has the power to establish the value and scope of any evidence. Nor is acquiescence -or, if applicable, the decision not to proceed with the case- because the court itself may order that examination of the case continue to ensure better protection of human rights, even if such acts have occurred. Therefore, the interests and requirements of justice are above the interests or the will of the party, and the former are geared toward protection of human rights in the specific case, but also toward potential solution of other cases, both regarding international jurisdiction itself and regarding domestic jurisdictions, by expressing a criterion that leads to that end. This is one of the aspirations and one of the characteristic features of international justice in the field of human rights. Therefore, substantive matters prevail over formal ones.

5. Contrary to what happens in other types of trial, the parties cannot withdraw the case, on their own, from being heard by the court and, therefore, from the judgment that the court may issue and that serves both to solve the problem raised and as a general protection of human rights, through the specific protection of certain rights of given individuals. This prevalence of public or social interest over specific or institutional interest is well known in certain situations of national trials, where it also sustains the unofficial expediting of the proceeding and the autonomous investigation into the truth.

6. Of course, issuing an acquiescence or a confession entails withdrawal of the preliminary objections filed, as has in fact been done, inasmuch as they are a prerequisite for a subsequent jurisdictional act of the Court, one that could not take place –or whose issuance would be, at the least, very debatable- if the State that confesses or acquiesces argues, at the same time, that the court must not hear the matter raised in the application, due to inadmissibility or lack of competence. Acquiescence is an invitation to hear and decide on the merits.

7. In several more or less recent cases –and of course in the one I am now discussing- the State has made an "institutional acknowledgment" that puts into effect the possibility of immediately deciding on all or some disputed issues. Of course, this acknowledgment is a right of the respondent State, but at the same time it usually reflects implicit fulfillment of an obligation undertaken in light of the American Convention, inasmuch as the States that are parties to it have taken on the duty to respect the rights set forth in said instrument and to adopt such measures as may be necessary for this to be so.It is an expression of the pacta sunt servanda

principle that corrects the offense committed in violation of that principle. Thus, compliance with the obligation derives from an act of the State (the acknowledgment) and provides an advancement for another act by the Court (the judgment).

8. It is necessary to express, as our court has done in certain cases, including this one, our appreciation of this conduct by the State, which has substantive and procedural implications, making it possible to solve the conflict with a contribution by the parties and not only through a ruling of the court, in accordance with the general motivation and nature of solutions that pertain to agreements among the parties. Their will, insofar as it contributes to the ultimate goal sought by whoever acquiesces or confesses, also contributes to the act of justice that is realized in the final ruling by the court.

9. In its April 29, 2004 ruling, the Court expressed that "the acknowledgment of international responsibility made by the State constitutes a positive contribution to the development of this process and to the effectiveness of the principles behind the American Convention on Human Rights" (para. 50). In this case, as in the Case of Molina Theissen v. Guatemala (which I mention here because the respective ruling was issued during the same session of the Court as the ruling in the instant case), the State added to its acquiescence regarding the facts and claims an unprecedented "request for forgiveness" addressed to the victims, the survivors and the next of kin, one that must be duly noted. This is, I believe, the first time that a State makes such a public statement during a trial before the Inter-American Court.

10. The expression "acknowledgment of international responsibility" includes several elements: it announces admission of a responsibility derived from an international commitment and it adds a qualification –"institutional"- that is not explicitly set forth in the provisions of the Inter-American adjudicatory system. Therefore, the Court must specify the meaning of this expression with respect to the aims of the sub judice case, resorting, whenever necessary, to the statements of the parties and to other elements evidenced in the proceeding and which allow it to decide that there has been a confession of facts, an acquiescence to claims, or both, either comprehensively or in part. It is desirable, though not indispensable -inasmuch as the Court can conduct its own examination of matters and decide accordingly-, for those who acquiesce to precisely state what facts they confess and what claims they accept, both in light of the application filed by the Inter-American Commission and regarding the claims mentioned by the victims and their next of kin, under the terms of Articles 36(1) and 53(2) of the Rules of Procedure of the Court.

11. In the instant case, the State of Guatemala withdrew the preliminary objections that it had raised at the outset and it acknowledged its international responsibility. When he explained this act, the agent of the State pointed out that the acknowledgment did not entail any judgment regarding individual criminal liabilities, subject to their own sphere of cognizance. This refers to what I have called the "duty of criminal justice" (see, for example, my article "Las reparaciones en el sistema interamericano de protección de los derechos humanos", in El sistema interamericano de protección de los derechos humanas en el umbral del siglo XXI. Memoria del Seminario (November, 1999), Inter-American Court of Human Rights, San José, Costa Rica, 2001, v. I, pp. 154-156), which the Inter-American Court examines when it rules on reparations, a matter not addressed in the April 29 judgment. This once again enables observation of the

nature of the judgments of the Court, traditionally differentiated and recently unified: on the one hand, they involve a ruling on the violation committed, if that were the case; on the other hand, they condemn certain actions, omissions or entitlements, if this were appropriate.

12. Taking into account the written and verbal expressions of the State, the Court has deemed it pertinent to issue rulings on the subject matter and on the development of the process. Its April 23, 2004 Order and the April 29 Judgment itself sought to do this. The former deemed the preliminary objections to be withdrawn and admitted the acknowledgment of international responsibility; the latter, to which I add this Opinion, stated that "the controversy regarding the facts that gave rise to the instant case has ceased" (operative paragraph 1, partly based on the statement made by the State, the nature of which constituted a confession) and that the State "breached the rights set forth" in various Articles of the American Convention (operative paragraph 2, partly based on the statement that, also in accordance with its nature, constituted an acquiescence).

13. As I have said above (supra sub 4), the Court could have ordered continuation of the proceeding regarding the facts and the violations that they entail, exercising an authority granted to it by Article 55 of the Rules of Procedure, but after analyzing the evidence regarding both matters (an authority that, I insist, it does not immediately decline due to an act by a party) it deemed that in the case in point the elements for the judicial decision reached were at hand.

14. It could be said that once the confession and the acquiescence had occurred –both of them under the title of acknowledgment of international responsibility- the dispute regarding the merits (facts in violation of rights protected by the Convention) had ceased, and that therefore it was not necessary to receive and weigh evidence (for example, testimony and expert opinions) nor to mention them in the judgment. I do not share this view. It was pertinent to hear the testimony and expert opinions previously offered to and admitted by the Court, which would encompass the reparations that were the new subject matter of the hearing, originally ordered to address preliminary objections, merits, and reparations. Even though the subject matter of the hearing would be reparations, these could hardly be examined –and this would be factually and juridically impossible- without referring to the facts that are their source and to the violations that explain and justify them.

15. On the other hand, the account of the facts in the judgment, even though the dispute on them has ceased, serves various pertinent purposes. First, it provides the motivation for the judicial ruling itself, which could not be issued in a "vacuum" nor based only and exclusively –for the reasons I gave above, supra sub 4, 10 and 13- on the expressions of the will of the parties. It also addresses the "instructive" aim, if I may use this term, that the judgments of an international human rights court must have, which might not exist in the situation of a national criminal court, save for the "general prevention" role of acts of criminal justice. And finally, they help clarify the connection between the stage of the proceeding that is closed by that ruling and the stage that it opens: that of reparations, which involve that "the injured party be ensured the enjoyment of his right or freedom that was violated" and reparation of "the consequences of the measure or situation that constituted the breach of such right or freedom" (Article 63(1) of the American Convention), if applicable. With respect to the latter, it is also necessary to consider -even though the respective formal statement should be made in the ruling on reparations- that the

account of the facts, in addition to their admission and that of the attendant violations by the State, in itself has a certain efficacy in terms of redress, as the Court has repeatedly stated.

16. The decision on reparations is based on the facts established during the prior stages of the proceeding and the violations proven during them. Thus, the judgment on the merits is the prerequisite and the condition for the judgment on reparations, save –of course- when both subjects are examined in a single ruling, as the Court now seeks to do, to make the proceeding more concentrated and to better serve the principles of procedural economy and promptness, the observance of which significantly contributes to the adequate development of the Inter-American proceedings and ultimately benefits the victim. The linkage between the facts reflected in the April 29 judgment and the reparations whose specification is yet pending can be seen even more clearly if we consider the explicit references in the judgment to specific aspects of those facts with the aim of deciding equally specific aspects in the reparations (para. 51), a point that I will address infra, in paragraph 17 of this Opinion.

17. In the course of the proceeding and in the very judgment to which I attach this Opinion, there have been references to what the Commission in its application called a "genocidal policy of the State with the intention of destroying, fully or in part, the indigenous Mayan people," a position that was also expressed by the representatives of the victims. These references suggest that we consider the implications that the violations might have from the perspective of other international instruments, especially the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In this regard, the judgment of the Court contains certain expressions (para. 51) that I share and that I deem pertinent to comment.

18. The Inter-American Court of Human Rights, established by means of a convention in 1969, exercises its competence in accordance with those provisions, agreed upon by the States parties to the American Convention, as well as with the provisions of other instruments that explicitly grant it new areas of subject-matter competence, also agreed upon by the States parties in the respective international acts, such as the San Salvador Protocol –which defines said competence under the terms of Article 19(6)-, the Inter-American Convention to prevent and punish torture, and the Inter-American Convention on forced disappearance of persons. The States have accepted the adjudicatory jurisdiction of the Court based on an understanding of the scope of said provisions.

19. Now then, the above does not impede the Inter-American Court from invoking elements or references contained in international Law as a whole, when it is appropriate to do so to interpret or integrate the provisions of the aforementioned conventions and protocol, bearing in mind the characteristics of the facts alleged and the text and meaning of the immediately applicable provisions. In this event, other instruments are not directly applied, to decide on violations of the rights or duties set forth in them, but rather they are used as elements of interpretation, assessment or judgment for a better understanding and the immediate application of the principles that explicitly grant it competence; in other words, for the direct application of the provisions contained in the latter. In this regard, it is pertinent to take into account what has been expressed in several rulings (such as the judgments in the Case of "Street Children" (Villagrán Morales et al.), November 19, 1999 Judgment, Series C No. 63, paras. 192-195; and Case of Bámaca Velásquez, November 25, 2000 Judgment, Series C No. 70, paras. 208-210, as

well as Advisory Opinion OC-17/2002 of August 28, 2002, on the "Legal status and human rights of the child," paras. 24 and 28-30).

20. Abridgment of a right enshrined in a provision of a convention -aside from the fact that it may also be embodied at other levels of national and international legal provisions and culture, which may be the basis for that provision- entails damage to a high-ranking right that warrants protection. Gravity of the damage is linked to the hierarchy of that right, the way it is harmed, and the fact, found in various situations, that the abridgment affects various rights at the same time. In this regard, we can bring in as a useful analogy or reference the criterion previously set forth by the Inter-American Court when it examined Article 4(1) of the American Convention in the judgments in the Cases of Hilaire, Constantine and Benjamín et al. (June 21, 2002 Judgments), to which I also added a Separate Concurring Opinion. The issue of "greater gravity" of an abridgment was also addressed, conceptually and juridically, in those cases. Some of the ideas stated then –with variations due to the shift from the criminal to the international order, and bearing in mind the specificities involved with respect to Article 4(1)- are equally applicable to the subject we are now addressing, and they contribute to the establishment of the "greater gravity" that may, also, be reflected in the consequences associated with State responsibility.

21. In the instant case, the facts "gravely affected the members of the Maya achí people in their identity and values and [...] took place within a pattern of massacres" (para. 51). The court has decided to examine the characteristics of these facts, many of which are notorious, "at the time when it rules on reparations" (id.). This means that said characteristics may be reflected in the reparations themselves, bearing in mind two aspects that naturally exist: the nature of the facts and the way they occurred (context, means, realization, consequences that will enable consideration of the magnitude and the conditions of the violation). This will lead to establishment of the gravity of the facts and the manner in which they should be assessed in the judgment on reparations. This does not modify the imputation of the facts to the State, due to actions or omissions of its agents, but it contributes to establishing their greater or lesser gravity and, therefore, the nature of the reparations that the Court may order, if appropriate.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO-TRINDADE

1. I have voted in favor of the adoption of this judgment of the Inter-American Court of Human Rights in the Case of Plan de Sánchez Massacre v. Guatemala. However, in this separate opinion, I wish to record the personal reflections that this judgment of the Court has prompted, owing to its particular gravity. Indeed, it is the first time in the history of the Inter-American Court that a massacre of this dimension has been submitted to its consideration. In this separate opinion, after making an initial distinction between the jurisdictional and the substantive issue of responsibility, I will focus on the content and scope of the principle of humanity, and then examine aggravated international responsibility, jus cogens in its broadest dimension, the

existence of State crime, and the co-existence of the international responsibility of the State and the individual. Lastly, I will present my final observations.

I. The Gravity of the Events

2. In the application in the Case of Plan de Sánchez Massacre, submitted to the Court on July 31, 2002, by the Inter-American Commission on Human Rights, the latter indicated, inter alia, that:

"The [Plan de Sánchez] massacre was perpetrated in the context of a policy of genocide of the State of Guatemala carried out with the intention of totally or partially destroying the Mayan indigenous people. The violations were on such a scale that they represented massive and multiple violations of the American Convention on Human Rights. (...)
The CEH [Historical Clarification Commission] recorded 626 massacres committed by State forces, principally the Army, supported by the paramilitary structure, during the armed conflict (...). 95% were perpetrated between 1978 and 1984 and, during this period, 90% were carried out in areas inhabited predominantly by the Mayan people. (...)
Some of the principal characteristics of the massacres during the armed conflict in Guatemala were that they were carried out using acts of excessive cruelty aimed at the elimination of individuals or groups of individuals who had been previously identified as the objective of the military operations, and to incite terror as a mechanism of social control. (...)
The massacres and land operations led to the extermination of complete Mayan communities, as well as the destruction of their homes, livestock, crops, and other elements of subsistence, so that, inter alia, the right to life of the Mayan people was violated, together with their right to ethnic or cultural identity, and the right to express and disseminate their culture. (...)
(...) The Plan de Sánchez massacre occurred within the framework of a State strategy intended to destroy an ethnic group using military operations that led to the massacre of thousands of members of the Mayan indigenous people, the flight of the survivors, the destruction of their subsistence economies and, lastly, the intentional submission of thousands of Mayan indigenous people to living conditions that depended on the military structure." (...). [FN1]

[FN1] Paragraphs 3, 54-55, 63 and 129 of the application.
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3. Furthermore, in their brief with comments on the Commission's application, submitted to the Court on September 27, 2002, the petitioners alleged, inter alia, that:

"The crimes committed in implementation of the scorched-earth policy, including the Plan de Sánchez massacre, constitute genocide against the Mayan indigenous people of Guatemala. (...)
The intention of these acts was to partially or totally destroy the Mayan ethnic group, which includes, as in this case, the Maya-Achí of Rabinal. (...)
(...) The result of the State policy has been the murder of thousands of Guatemalan Mayan indigenous people and the complete eradication of almost 440 villages. (...) The CEH recorded 626 massacres that could be attributed to the [State] forces. Victims and survivors of such crimes have been forced to live under a regime of terror and repression, under the authority of those who

had carried out the massacres, unable to speak out or demand justice for themselves or their dead. (...) After the massacres, the survivors were forced to live in an environment created and controlled by the Army." (...). [FN2]

[FN2] Paragraphs 354, 357 and 359 of the brief with observations.

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4. During the contentious proceeding before the Inter-American Court, the respondent State acknowledged, with dignity, its international responsibility for the Plan de Sánchez massacre, in the words transcribed in paragraphs 34 to 38 of this judgment. The Court assessed this acknowledgment as “a positive contribution to the development of this proceeding and to the exercise of the principles that inspire the American Convention" (para. 50). Despite acknowledging its responsibility for the violation of several provisions of the American Convention (cf. para. 36(3) and (4)), the State did not refer to “the issue of genocide,” which the Commission and the petitioners had raised in their briefs, “since it was not a matter covered by the American Convention" (para. 36(5)).

5. In its report, Guatemala - Memoria del Silencio, the Historical Clarification Commission (CEH) established that “acts of genocide” were perpetrated, particularly, during the period from 1981 to 1983, which saw the highest rates of violence in the armed conflict in Guatemala (during which 81% of the grave human rights violations occurred). [FN3] In its assessment of the events that occurred in four regions of Guatemala, the CEH concluded that “acts of genocide” were perpetrated against members of the Maya-Ixil, Maya-Achi, Maya-k'iche', Maya-Chuj and Maya-q'anjob'al peoples. [FN4] In its "final conclusions" in this respect, the CEH repeatedly referred to the concept of acts of genocide. [FN5] In the opinion of the CEH, the victims were, above all, the “most vulnerable” members of the Mayan communities (especially children and the elderly), [FN6] and these grave human rights violations involved both the individual responsibility of the “masterminds and perpetrators” of the “acts of genocide” and “State responsibility,” because most of these acts were the “result of a policy pre-established by a superior officer for the perpetrators.” [FN7]

[FN3] The CEH considered it "pertinent to make a distinction between a genocide policy and acts of genocide. A genocide policy exists when the final objective of the actions is the total or partial extermination of a group. Genocidal acts occur when the final objective is not the extermination of the group, but other political, economic, military or any other type of goal, yet the means used to achieve this final objective include the total or partial extermination of the group.” Historical Clarification Commission,
Guatemala - Memoria del Silencio, tome III, Guatemala, CEH, 1999, pp. 316-318.
[FN4] Cf. ibid., pp. 358, 375-376, 393 and 416, respectively.
[FN5] Cf. ibid., pp. 417-423.
[FN6] Cf., for example., ibid., p. 410.
[FN7] Ibid., p. 422.

II. Jurisdiction and Responsibility

6. It is true that the Inter-American Court lacks jurisdiction to determine violations of the Convention on the Prevention and Punishment of the Crime of Genocide (1948). But, two observations are in order. First, Guatemala undertook to protect all the rights embodied in the American Convention as of the date on which it ratified the Convention: May 25, 1978 – prior to the Plan de Sánchez massacre. As I stated in my separate opinion in Case of Blake v. Guatemala (Merits, Judgment of January 24, 1998):

"One ought to avoid the confusion between the question of the invocation of the responsibility for compliance with the conventional obligations undertaken by the State Party and the question of the submission of the latter to the jurisdiction of the Court" (para. 34).

7. The jurisdictional issue is distinct from the substantive issue of international responsibility. Even though the Inter-American Court lacks jurisdiction to rule on alleged acts of genocide (which is beyond is competence ratione materiae), this does not exempt the defendant State from its international responsibility – which the State has acknowledged in the instant case – for violation of the rights protected by the American Convention and other humanitarian treaties to which Guatemala is a Party.

8. The State of Guatemala ratified the Convention on the Prevention and Punishment of the Crime of Genocide on January 13, 1950. It also ratified the four 1949 Geneva Conventions on international humanitarian law on May 14, 1952, as well as the two 1977 Additional Protocols to those Conventions on October 19, 1987. The four 1949 Geneva Conventions single out the "grave breaches," [FN8] and determine, inter alia, the humane treatment of all those affected, [FN9] and respect for the dead. [FN10] The two 1977 Additional Protocols establish "fundamental guarantees." [FN11] The latter include respect for all human beings, including their "religious practices" and their "convictions" (philosophical or of any other nature). [FN12] Protection is extended to the places of worship, which "constitute the cultural or spiritual heritage of peoples." [FN13]

[FN8] Articles 50/51/130/147.
[FN9] Articles 12/12/13/27.
[FN10] Articles 17/20/120/130.
[FN11] Protocol I, Article 75; Protocol II, Articles 4-6.
[FN12] Protocol II, Article 4; cf. commentaries in: Various authors, Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949 (eds. Y. Sandoz, Chr. Swinarski and B. Zimmermann), Geneva, Nijhoff/ICRC, 1987, pp. 1368-1381 (commentaries by S. Junod); M. Bothe, K.J. Partsch and W.A. Solf, New Rules for Victims of Armed Conflicts - Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949, The Hague, Nijhoff, 1982, pp. 640-643.
[FN13] Article 53(a) of 1977 Protocol I.

III. The Principle of Humanity

9. Humane treatment, under any and every circumstance, encompasses all forms of human behavior and all situations of vulnerable human existence. More than an aspect of those guarantees, humane treatment corresponds to the principle of humanity that cuts across the whole corpus juris of both treaty-based and customary international humanitarian law. This consideration leads me to my second point: general international law must into account, at the same time as treaty-based international law.

10. Herein lies an element that I believe to be of fundamental importance: acts that are considered genocide or grave violations of international humanitarian law under different international treaties and conventions (including the American Convention) were already prohibited by general international law, even before the entry into force of those treaties or conventions. The universal recognition of the above-mentioned principle of humanity can be mentioned in this regard. [FN14]

[FN14] In this regard, it has already been indicated that: "it is increasingly believed that the role of international law is to ensure a minimum of guarantees and of humanity for all, whether in time of peace or in time of war"; J. Pictet, The Principles of International Humanitarian Law, Geneva, ICRC, 1966, pp. 29-30.

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11. According to the abiding message of a great philosophical jurist, “even if the laws themselves were not in force, at least their content was in force” before the atrocities of the twentieth century were committed in different latitudes: “in other words,” continued G. Radbruch:

“the content of those laws responds to a law which is above the law (...).
From which we see that, following a century of juridical positivism, the idea of a law which is above the law resuscitates (...). The way towards the solution of these problems is implicit in the name given to the philosophy of law in the ancient universities and which, after many years of disuse, has re-emerged today in the name and concept of natural law.” [FN15]

[FN15] G. Radbruch, Introducción a la Filosofía del Derecho [Vorschule der Rechtsphilosophie], 3a. ed. in Spanish, México, Fondo de Cultura Económica, 1965, p. 180.

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12. We should not forget that in the Case of J.-P. Akayesu (Judgment of September 2, 1998), the ad hoc International Tribunal for Rwanda considered that the concept of crimes against humanity had “already been recognized a long time before” the Nuremberg trials (1945-1946) (para. 565). The Martens clause contributed to this (cf. infra). Indeed, expressions similar to the one relating to that crime, invoking humanity as a victim, “appear much earlier in human history (para. 566). The same International Tribunal for Rwanda indicated in the Case of J. Kambanda (Judgment of September 4, 1998) that, “in all periods of history, genocide has inflicted massive

losses on humanity," and its victims are both those massacred and humanity itself (in both acts of genocide and in crimes against humanity) (paras. 15-16). [FN16]

[FN16] The same considerations can be found in the judgments of the same Court in the Case of J.P. Akayesu cited above, and also in the Case of O. Serushago (Judgment of February 2, 1999, para. 15).

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13. It is evident that the substance of the condemnation of grave violations of human rights, acts of genocide, crimes against humanity, and other atrocities, was already engraved on the human conscience a long time before they were typified or codified at the international level, either in the 1948 Convention on the Prevention and Punishment of Genocide, or in other human rights or international humanitarian law treaties. Nowadays, international crimes are condemned by both general and treaty-based international law. This development has been fostered by the universal juridical conscience, which, in my opinion, is the ultimate material source of all law.

14. Contemporary international law (treaty-based and general) has been characterized overall by the emergence and evolution of its peremptory norms (jus cogens), and an increased awareness, on a virtually universal scale, of the principle of humanity. [FN17] Grave human rights violations, acts of genocide and crimes against humanity, amongst other atrocities, violate absolute prohibitions of jus cogens. [FN18] Humaneness – which is a feature of a new jus gentium of the twenty-first century – cuts across all the corpus juris of contemporary international law. In my opinions for this Court – including my concurring opinion in Advisory Opinion No. 16 on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (of October 1, 1999) – I have called this development a historic process of the true humanization of international law (para. 35).

[FN17] T.O. Elias, "New Trends in Contemporary International Law", in Contemporary Issues in International Law (eds. D. Freestone, S. Subedi and S. Davidson), The Hague, Kluwer, 2002, pp. 11-12.

[FN18] Cf. M.C. Bassiouni, Crimes against Humanity in International Criminal Law, 2a. ed. rev., The Hague, Kluwer, 1999, pp. 210-211, with regard to crimes against humanity.

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15. I have already described my own conception of the fundamental role and central position of the general principles of law in any legal system (national or international) extensively and in detail in my concurring opinion in Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (2003). Already, in 1951, in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide, the International Court of Justice (ICJ) had recognized the principles underlying this Convention as principles that were:

"obligatory for the States, even in the absence of any treaty-based obligation." [FN19]

[FN19] ICJ, ICJ Reports (1951) p. 23.

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16. In its constant case law when interpreting and applying the American Convention, the Inter-American Court has consistently invoked the general principles of law. [FN20] Among these principles, those endowed with a truly fundamental nature form the substratum of the legal system itself, revealing the right to law to which all human beings are entitled. [FN21] In the domain of international human rights law, the principle of the dignity of the human being and that of the inalienability of his inherent rights belong to this category of fundamental principles. It its Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (2003), the Inter-American Court referred expressly to both principles. [FN22]

[FN20] Cf. Inter-American Court of Human Rights (IACtHR), Five Pensioners vs. Peru (Judgment of February 28, 2003), para. 156; IACtHR, Cantos vs. Argentina (Preliminary Objections, Judgment of September 7, 2001), para. 37; IACtHR, Baena Ricardo et al. vs. Panama (Judgment of February 2, 2001), para. 98; IACtHR, Neira Alegría vs. Peru (Preliminary Objections, Judgment of December 11, 1991), para. 29; IACtHR, Velásquez Rodríguez vs. Honduras (Judgment of July 29, 1988), para. 184; and cf. also IACtHR, Advisory Opinion No. 17, on The Juridical Status and Human Rights of the Child (of August 28, 2002), paras. 66 and 87; IACtHR, Advisory Opinion No. 16, on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (of October 1, 1999), paras. 58, 113 and 128; IACtHR, Advisory Opinion No. 14, on International Responsibility for the Promulgation and Enforcement of Laws in Violation of the American Convention on Human Rights (of December 9, 1994), para. 35.

[FN21] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, tome III, Porto Alegre/Brasil, S.A. Fabris Ed., 2003, pp. 524-525.

[FN22] Paragraph 157 of the said Advisory Opinion.

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17. The primacy of the principle of respect for the dignity of the human being is identified as the purpose of both law and the legal system at the national and the international level. By virtue of this fundamental principle, all individuals must be respected (both their honor and their beliefs), based on the mere fact of belonging to the human race, irrespective of any other circumstance. [FN23] The principle of the inalienability of the rights inherent in the human being is, in turn, identified with a basic premise of the development of the whole corpus juris of international human rights law.

[FN23] B. Maurer, Le principe de respect de la dignité humaine et la Convention Européenne des Droits de l'Homme, Paris, CERIC/Univ. d'Aix-Marseille, 1999, p. 18.

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18. In relation to the principles of international humanitarian law, it has been argued with persuasion that, instead of trying to identify provisions of the 1949 Geneva Conventions or the 1977 Additional Protocols that could be considered to express general principles, it would be

preferable to consider these conventions and other humanitarian law treaties as a whole, as constituting the expression – and the development – of those general principles, applicable under any circumstances, so as to better ensure the protection of the victims. [FN24]

[FN24] R. Abi-Saab, "Les 'principes généraux' du Droit humanitaire selon la Cour Internationale de Justice", 766 Revue internationale de la Croix-Rouge (1987) pp. 386 and 389.

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19. In the Mucic et allii case (Judgment of February 20, 2001), the International Criminal Tribunal for the Former Yugoslavia (Appeals Chamber) considered that both international humanitarian law and international human rights law are founded on their common concern for safeguarding human dignity, which forms the basis for their minimum standards of humanity (para. 149). Indeed, the principle of humanity may be understood in different ways. First, it can be conceived as an underlying principle of the prohibition of inhuman treatment established in Article 3 common to the four 1949 Geneva Conventions.

20. Second, this principle may be invoked referring to humanity as a whole, in relation to matters of common, general and direct interest to the latter. And, third, the same principle may be used to quality a specific quality of humaneness. In the Celebici case (Judgment of November 16, 1998), the said International Criminal Tribunal for the Former Yugoslavia (Trial Chamber), described inhuman treatment as an intentional or deliberate act or omission, which caused "serious mental or physical suffering or damage," or constituted a "serious attack on human dignity" (para. 543). And added that:

"inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed 'grave breaches' in the Conventions fall" (para. 543).

Subsequently, in the T. Blaskic case (Judgment of March 3, 2000), the same Tribunal (Trial Chamber) reiterated this position (para. 154).

21. We should not forget the celebrated Martens clause, which was originally inserted in the preambles to the 1899 Hague Convention (II) (para. 9) and the 1907 Hague Convention (IV) (para. 8), both relating to the laws and customs of war on land. Its purpose was to juridically extend protection to civilians and combatants in all situations, even those not contemplated in treaty-based provisions. To this end, the Martens clause invoked "the principles of international law, as they result from the usages established," and also the "laws of humanity" and "the dictates of the public conscience." Subsequently, the Martens clause again appeared in the common provisions relating to denunciation of the four 1949 Geneva Conventions on international humanitarian law (Articles 63/62/142/158), and in Additional Protocol I (1977) to the Conventions (Article 1(2)) – to cite some of the principal international humanitarian law conventions. For more than a century, this clause has continued to be valid.

22. The Martens clause maintains that the principles of international law, the laws of humanity and the requirements of the public conscience continue to be applicable, irrespective of

the emergence of new situations. Accordingly, the said clause (which forms part of general international law) prevents non liquet, and plays an important role in the hermeneutics of humanitarian legislation. The “laws of humanity” and the “requirements of the public conscience,” which it invokes, fall within the domain of jus cogens. In summary, the Martens clause, as a whole, has been conceived and repeatedly affirmed to the benefit of the whole human race, thus ensuring its continuing relevance; it can be considered an expression of the reason of humanity, imposing limits on the reason of State (raison d'État). [FN25]

[FN25] A.A. Cançado Trindade, "Reflexiones sobre el Desarraigo como Problema de Derechos Humanos Frente a la Conciencia Jurídica Universal", in La Nueva Dimensión de las Necesidades de Protección del Ser Humano en el Inicio del Siglo XXI (A.A. Cançado Trindade and J. Ruiz de Santiago), 1a. ed., San José, Costa Rica, UNHCR, 2001, pp. 19-78, esp. pp. 58-78.

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23. This judgment of the Inter-American Court in the Case of Plan de Sánchez Massacre goes beyond the common denominator of international human rights law and international humanitarian law and contains conceptual elements that belong to international refugee law. For example, this is the case of the specific reference to the criterion of the “justified fear of persecution” (para. 42(29)), inherent in the latter aspect of human rights protection. Indeed, events such as those of the instant case (massacres and “scorched earth” policies) generated fear, and gave rise to forced displacements and the arrival of Guatemalan refugees in Mexico, particularly after 1981-1982). [FN26] This case brings into evidence the rapprochement or convergence between the three aspects of protection, which, as I have been maintaining for several years, are to be found at the normative and hermeneutical level and also at the operational level, in order to maximize the protection of human rights. [FN27]

[FN26] UNHCR, Memoria-Presencia de los Refugiados Guatemaltecos en México, México, UNHCR/Comisión Mexicana de Ayuda a Refugiados, 1999, pp. 41, 45, 167, 235 and 314; A. Rouquié, Guerras y Paz en América Central, México, Fondo de Cultura Económica, 1994, pp. 152-153 and 325.

[FN27] Cf. A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, tome I, 1a. ed., Porto Alegre, S.A. Fabris Ed., 1997, chap. VIII, pp. 269-352; A.A. Cançado Trindade, El Derecho Internacional de los Derechos Humanos en el Siglo XXI, Santiago de Chile, Editorial Jurídica de Chile, 2001, chap. V, pp. 183-265; A.A. Cançado Trindade, Derecho Internacional de los Derechos Humanos, Derecho Internacional de los Refugiados y Derecho Internacional Humanitario - Aproximaciones y Convergencias, Ginebra, ICRC, [2001], pp. 1-66.

IV. Aggravated International Responsibility

24. The fact that the Inter-American Court lacks jurisdiction to determine violations of the Convention on the Prevention and Punishment of Genocide (1948) does not mean that the Court cannot take into account acts that this Convention classifies as genocide, as aggravating circumstances of violations of the rights protected by the American Convention on Human

Rights (with a direct effect on the determination of reparations). To this end, it is not necessary for these acts to be classified as genocide, which could give rise to difficulties in applying the provisions of the American Convention, whose purpose is to determine the international responsibility of the State and not of the individual.

25. Nevertheless, I do not consider these difficulties to be insurmountable. Under the American Convention it is perfectly possible to determine the aggravated international responsibility of the State, with all the juridical consequences for reparations. These include compliance with the State's obligation to determine the individual criminal responsibility of the perpetrators of the violations of the protected rights, and their corresponding punishment. This is not the first time that the Inter-American Court identifies aggravated international responsibility (in the terms of paragraph 51 of this judgment in the Case of Plan de Sánchez Massacre). In its preceding judgment of November 25, 2003, in Case of Myrna Mack Chang v. Guatemala, the Court concluded that, from the proven facts, an "aggravated international responsibility of the respondent State" was evident (para. 139).

26. Norms embodied in treaties and conventions may perfectly well be evidence of customary international law. [FN28] Further still, they may subsist as norms of both treaty-based and customary international law. [FN29] The 1948 Convention on Genocide codified the matter in question. Even if it is considered – a view I do not share – that it was only after the adoption of that Convention that the prohibition of genocide gradually came to incorporate contemporary international law (following its embodiment in international treaty-based law), it cannot be denied that, when the facts of the instant case occurred, the prohibition of genocide was already part of international customary law and, even, of jus cogens. [FN30]

[FN28] R.R. Baxter, "Treaties and Custom", 129 Recueil des Cours de l'Académie de Droit International de La Haye (1970) pp. 31, 43, 57 and 102-103.

[FN29] Remember, for example, the principle of pacta sunt servanda – to which the two Vienna Conventions on the Law of Treaties refer (Article 26 and preamble), - which emerged as a general rule for the interpretation of treaties and of international customary law. Thus, this principle is deeply rooted in the corpus juris of international law as a whole; M. Lachs, "Pacta Sunt Servanda", in Encyclopedia of Public International Law (ed. R. Bernhardt), vol. 7, Amsterdam, North-Holland/Max Planck Institute, 1984, pp. 364-371. The basic issue of the validity of the norms of international law transcends the sphere of the law of treaties. Perhaps, in the last analysis, the basis of an international obligation is of a meta-juridical nature; J.L. Brierly, The Basis of Obligation in International Law, Oxford, Clarendon Press, 1958, p. 65; J.L. Brierly, The Law of Nations, 6a. ed., Oxford, Clarendon Press, 1963, p. 54.

[FN30] Cf., in this respect, for example, W.A. Schabas, Genocide in International Law, Cambridge, University Press, 2002 [reprint], pp. 445 and 500-501, and cf. pp. 434-435; and, regarding the prohibition of genocide as being established by general or customary international law, cf. ibid., pp. 99, 142, 362, 365 and 548; and cf. also ibid., pp. 168 and 209, on the events in Guatemala.

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27. Here we are truly entering the domain of jus cogens and of aggravated international responsibility. I have already described in detail the juridical consequences of the latter in my above-mentioned separate opinion (paras. 41 to 55) to the Case of Myrna Mack Chang (2003), which I refer to here. In my opinion, the interpretation and application of the American Convention does not exclude the interpretation and application of general international law; to the contrary, it requires this.

28. The preamble to the American Convention refers expressly to the principles reaffirmed and developed in international instruments, that are "worldwide as well as regional in scope" (para. 3). It also refers to the obligations imposed by international law (Article 27), [FN31] and to the "generally recognized principles of international law" (Article 46(1)(a)). [FN32] Indeed, the general principles of law [FN33] orient each and every juridical system and guide both general and treaty-based law. The latter are applied concomitantly, [FN34] and the fact that a general principle of law has found expression in multilateral conventions does not deprive it of continued application as a principle of customary international law; general international law continues to apply pari passu with treaty-based international law. [FN35]

[FN31] On suspension of guarantees.
[FN32] On the rule of exhaustion of remedies of domestic law.
[FN33] Encompassing those of national legal systems and of international law.
[FN34] Cf., in general, for example, G. Barile, "La structure de l'ordre juridique international - Règles générales et règles conventionnelles", 161 Recueil des Cours de l'Académie de Droit International de La Haye (1978) pp. 48-64. Regarding genocide, it has been suggested that "the most promising route for the future evolution of international law on genocide would be through clearer expansion of customary international law"; S.R. Ratner and J.S. Abrams, Accountability for Human Rights Atrocities in International Law, 2a. ed., Oxford, University Press, 2001, p. 45.
[FN35] ICJ, Nicaragua vs. the United States (Merits), ICJ Reports (1986) pp. 93-97, paras. 174-181. Regarding the understanding that specific norms of treaty-based international humanitarian law also form part of general international law, cf. G. Abi-Saab, "The 1977 Additional Protocols and General International Law: Some Preliminary Reflexions", in Humanitarian Law of Armed Conflict: Challenges Ahead – Essays in Honour of F. Kalshoven (eds. A.J.M. Delissen and G.J. Tanja), Dordrecht, Nijhoff, 1991, p. 126.

V. Jus Cogens in its Broadest Dimension

29. In my opinion, the concept of jus cogens transcends the sphere of the law of treaties [FN36] and that of the law on State international responsibility, [FN37] and extends to general international law and the very foundations of the international legal order. The Inter-American Court referred to this evolution in its recent Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (paras. 98 to 99). In my concurring opinion to that Advisory Opinion, I reflected that this evolution obeyed the necessity of "a minimum of verticalization in the international legal order, erected upon pillars in which the juridical and the ethical are merged (para. 66), and I added:

"On my part, I have always sustained that it is an ineluctable consequence of the affirmation and the very existence of peremptory norms of international law their not being limited to the conventional norms, to the law of treaties, and their being extended to every and any juridical act [FN38]. Recent developments point out in the same sense, that is, that the domain of the jus cogens, beyond the law of treaties, encompasses likewise general international law [FN39]. Moreover, the jus cogens, in my understanding, is an open category, which expands itself to the extent that the universal juridical conscience (material source of all law) awakens for the necessity to protect the rights inherent to each human being in every and any situation" (para. 68).

[FN36] Established in the two Vienna Conventions on the Law of Treaties (1969 and 1986), Articles 53 and 64.
[FN37] For example, its recognition in the articles on State Responsibility adopted by the United Nations International Law Commission in 2001.
[FN38] Cf. A.A. Cançado Trindade, Tratado de Direito Internacional..., op. cit. supra n. (97), vol. II, pp. 415-416.
[FN39] For the extension of jus cogens to all possible juridical acts, cf., e.g., E. Suy, «The Concept of Jus Cogens in Public International Law», in Papers and Proceedings of the Conference on International Law (Langonissi, Greece, April 3 to 8, 1966), Geneva, C.E.I.P., 1967, pp. 17-77.

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30. Thus, nowadays, prohibition of the practices of torture and inhuman treatment, forced disappearance of persons, summary and extrajudicial executions, and failure to respect personal honor and beliefs (including those related to the relations between the living and the dead), is absolute and universal, because it belongs to the domain of international jus cogens. This prohibition is affirmed in these terms today, owing to the awakening of the universal juridical conscience, which, I repeat, constitutes the material source of all law. The violation of this general prohibition gives rise to the aggravated international responsibility of the State and the international criminal responsibility of those responsible for the violations (both masterminds and perpetrators).

31. As I also indicated in my abovementioned concurring opinion in this Court's Advisory Opinion No 18 on The Juridical Status and Rights of Undocumented Migrants (2003):

"To the international objective responsibility of the States corresponds necessarily the notion of objective illegality (one of the elements underlying the concept of jus cogens). In our days, no one would dare to deny the objective illegality of acts of genocide, of systematic practices of torture, of summary and extra-legal executions, and of forced disappearance of persons (...), condemned by the universal juridical conscience, parallel to the application of treaties.
(...) The emergence and assertion of jus cogens evoke the notions of international public order and of a hierarchy of legal norms, as well as the prevalence of the jus necessarium over the jus voluntarium; jus cogens presents itself as the juridical expression of the very international community as a whole, which, at last, takes conscience of itself, and of the fundamental principles and values which guide it" (paras. 71 and 73).

32. The above-mentioned jus cogens prohibitions are categorical nowadays, at the current stage of the evolution of contemporary international law. In addition, they reveal the gradual emergence of a universal international law. The purpose of jus cogens is precisely to ensure the most fundamental interests and values of the international community as a whole. [FN40] The said prohibitions (of grave human rights violations) indicate, according to M. Lachs, how:

"mankind, or the international community, on its journey through history, found it necessary to outlaw once and for all certain actions (...). On this, the deniers and doubters have to agree, if they accept the basic premises of law and the imperative of its progress." [FN41]

[FN40] B. Simma, "From Bilateralism to Community Interest in International Law," 250 Recueil des Cours de l'Académie de Droit International de La Haye (1994) p. 289.
[FN41] M. Lachs, "The Development and General Trends of International Law in Our Time," 169 Recueil des Cours de l'Académie de Droit International de La Haye (1976) pp. 272-273.

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33. There are international obligations relating to the safeguard of fundamental values of the international community that differ from other international obligations; this has given rise to the emergence in contemporary international law of concepts such as those of obligations erga omnes, pertinent to jus cogens. [FN42] Consequently, the classic vision of a single, undifferentiated regime of international responsibility no longer corresponds to the actual stage of evolution of the issue in contemporary international law. [FN43] In my opinion, the current search for a normative and conceptual hierarchy in the international legal order (illustrated by the establishment of jus cogens) has established aggravated international responsibility in cases of particularly grave human rights violations and international crime with all its legal consequences. Owing to their particular gravity, international crime and violations of jus cogens affect the basic values of the international community as a whole. [FN44]

[FN42] V. Starace, "La responsabilité résultant de la violation des obligations à l'égard de la communauté internationale", 153 Recueil des Cours de l'Académie de Droit International de La Haye (1980) p. 205.
[FN43] Ibid, pp. 274-275, and cf. pp. 289, 297 and 308.
[FN44] C. Tomuschat, "Obligations Arising for States without or against Their Will," 241 Recueil des Cours de l'Académie de Droit International de La Haye (1993) p. 224, and cf. p. 307.

VI. Existence of State Crime

34. Aggravated responsibility is precisely the responsibility that corresponds to a State crime, even though this is not an attempt to suggest an inadequate analogy with categories of domestic criminal law. The facts of this Case of Plan de Sánchez Massacre speak for themselves, eloquently, revealing that State crime does exist, even though part of international juridical doctrine, clinging to the dogmas of the past, seeks to deny or elude this. State crime, entailing

aggravated international responsibility directly affects the fundamental values of the international community as a whole.

35. From this perspective, State crime is a grave violation of peremptory international law (jus cogens). State crime becomes even more evident to the extent that it is established by the State's intention (act or omission) or tolerance, acquiescence, negligence or omission in relation to grave violations of human rights and international humanitarian law perpetrated by its agents, even in the name of a State policy.

36. Here, the principle of the objective and absolute responsibility of the State gives way to responsibility based on act or omission, provided that the State's intention to cause damage or its negligence in avoiding such damage can be shown – as in the instant Case of Plan de Sánchez Massacre. As in the Case of Myrna Mack Chang, here, the act or omission becomes the essential conceptual basis for the State's responsibility, aggravated by this circumstance. As I mentioned in my separate opinion in the Case of Myrna Mack Chang:

"Crimes of State are much more than a possibility; as the facts of the cas d'espèce show, they are a reality. As long as attempts to evade the issue continue, contemporary international juridical doctrine will continue to succumb to the specter of State sovereignty, and it will continue to hold back the evolution of the law of nations in our days. As long as its existence continues to be denied, the human person, the ultimate one entitled to its inherent rights, and prior and superior to the State, will be denied protection and exercise of said rights, first of all the right to justice; the human person will also be denied reparations for abridgments of those rights.
As long as its existence continues to be denied, the State – hostage to a deformed structure of repression and impunity - will be deprived of its principal aim, the realization of the common weal. As long as its existence continues to be denied, in the midst of an empty semantic imbroglio (which distracts attention from the central issue, which is the need to ensure that justice prevails), the Law itself will be deprived of its ultimate aim, which is precisely the realization of justice. As long as attempts to avoid the issue continue, treatment of the central chapter of the law of international responsibility of the State will continue to be unconvincing, in addition to being conceptually incomplete and juridically inconsistent. With this, the construction and consolidation of the true Rule of Law will regrettably be postponed, and in the framework of the latter, that of the true right to the Law, that is, the right to a legal order that effectively safeguards the fundamental rights of the human person" (paras. 54 and 55).

VII. Coexistence of the International Responsibility of the State and the Individual

37. I do not consider that there is any legal impediment to the concomitant determination of the international responsibility of the State and the criminal responsibility of the individual in the terms indicated above (para. 25, supra) in relation to the American Convention, which reveals the interaction between the national and international legal orders in this domain of the protection of human rights. In this regard, it has been considered that, since the facts determined by the Historical Clarification Committee (CEH) coincided with crimes classified in both domestic and international laws, and since the respective conducts were classified as "the most serious on the social scale," meriting "the most severe social penalties," a mere "ethical

reproach" was necessary but insufficient; consequently, for such conduct, "the imposition of a penalty" was envisaged. And it was added that:

"If the reproach is only moral the whole system for the prevention of crime and the protection of the legal rights established by criminal law is distorted. If a criminal penalty is not applied in the case of such serious acts, society may consider that acts that were prohibited were permitted or, at the very least, consider that they were justified." [FN45]

The struggle against impunity is based on the foregoing. However, at the strictly international level the matter has still not been developed sufficiently, and this reflects the persisting attitude of dealing with the international responsibility of the State and the criminal responsibility of the individual separately and in a compartmentalized manner.

[FN45] C. Paz and Paz Bailey, La Tipificación de Violaciones en Contra de Derechos Fundamentales y los Hechos de Violencia Vinculados al Enfrentamiento Armado, Guatemala, CECI/Instituto de Estudios Comparados en Ciencias Penales de Guatemala, 1998, p. 2.

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38. At the actual stage of insufficient development of the issue, the international human rights tribunals (the European and Inter-American Courts and, in future, the African Court) focus on the former (State international responsibility), while the ad hoc international criminal tribunals (for the Former Yugoslavia and for Rwanda) and the International Criminal Court (ICC) deal with the latter (the international criminal responsibility of the individual). But the international responsibility of the State and the individual are complementary. However, when focusing on the international responsibility of the State for violations of the rights it protects, the American Convention on Human Rights does not fail to indicate – in its often overlooked Article 32(1) [FN46] – that "every person has responsibilities to his family, his community, and mankind."

[FN46] Regarding the correlation between obligations and rights.

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39. The reaction to grave and systematic violations of human rights and international humanitarian law are today a legitimate concern of the international community as a whole. This reaction is even more necessary when the victims are vulnerable and defenseless (as in this Case of Plan de Sánchez Massacre), and the structure of public power is deformed and put at the service of repression rather than in the search of the common good. I consider that the international criminal responsibility of the individual does not excuse that of the State; the two co-exist, and recognition of this is of crucial importance for the eradication of impunity. The norms of contemporary international law are addressed directly at both the State and its agents; the conduct of both is established and regulated by those norms, and both the State and its agents must respond for the consequences of their acts and omissions.

VIII. Epilogue

40. I could not conclude this separate opinion without referring, very briefly, to an aspect of the Case of Plan de Sánchez Massacre that, in my opinion, cannot be ignored. Even though the facts occurred 22 years ago, they are certainly still alive in the memory of the survivors. The years of silence and humiliation, faced with the difficulties of locating the clandestine cemeteries and exhuming the corpses of those murdered in the massacre, and the prolonged denial of justice, could not erase what happened in Plan de Sánchez on July 18, 1982, from the memory of the survivors. As a Latin America writer has indicated, "forgetting is full of memories"; [FN47] in other words, there is no forgetting.

[FN47] M. Benedetti, El Olvido Está Lleno de Memoria, Bogotá, Edit. Planeta, 2001, pp. 13-19.

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41. Memory is enduring, it resists the erosion of time, it surges up from the depths and darkness of human suffering; since the routes of the past were traced and duly trod, they are already known, and remain unforgettable. In this respect, a great thinker of the twentieth century said that we should never ignore "respect for the eternal human rights, appreciation for what is old, and the continuity of the culture and history of the spirit." [FN48]

[FN48] C.G. Jung, op. cit. infra n. (48), p. 278.

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42. Two decades after the Plan de Sánchez massacre, the defendant State has acknowledged its international responsibility for the grave human rights violations [FN49] in the cas d'espèce, and the victims of Plan de Sánchez have had the merits of their case heard and decided by an international human rights court. The survivors of the Plan de Sánchez massacre can now fully reconstruct or reconstitute their relations with their dead, vindicated by this judgment of the Inter-American Court.

[FN49] Embodied in Articles 1(1), 5(1) and (2), 8(1), 11, 12(2) and (3), 13(2)(a) and (5), 16(1), 21(1) and (2), 24 and 25 of the American Convention; cf. para. 46 of this judgment.

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43. In summary, the human conscience is the material source of all law. The collective conscience of the members of the Mayan people has given eloquent testimony of its spiritual, individual and collective existence, which identifies, connects and distinguishes them. The fate of each one of them is inescapably linked to that of the other members of their communities. As C.G. Jung so lucidly reflected in his autobiography, the human soul has an objective nature and behavior. [FN50] The spiritual, individual and collective existence is an objective reality. The facts of this case prove this fully.

[FN50] C.G. Jung, Recuerdos, Sueños, Pensamientos, Barcelona, Ed. Seix Barral, 2002, pp. 126 and 135.

Antônio Augusto Cançado-Trindade
Judge

Pablo Saavedra-Alessandri
Secretary